

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

CELLULAR COMMUNICATIONS )  
EQUIPMENT, LLC )  
 ) DOCKET NO. 6:14cv251  
-vs- )  
 ) Tyler, Texas  
 ) 8:31 a.m.  
APPLE INC., ET AL ) September 6, 2016

TRANSCRIPT OF PRETRIAL, VOIR DIRE, TRIAL  
MORNING SESSION  
BEFORE THE HONORABLE K. NICOLE MITCHELL,  
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S

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P R O C E E D I N G S

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THE COURT: Good morning, everyone.

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Ms. Hardwick, if you'll call the case, please.

18

Please be seated.

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COURTROOM DEPUTY: Yes, your Honor. Court calls  
Civil Action 6:14cv251, Cellular Communications Equipment,  
LLC, versus Apple, Inc.

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MR. HILL: Good morning, Your Honor. Wesley Hill,  
Brad Caldwell, Ed Nelson, Austin Curry on behalf of the  
Plaintiff.

25

THE COURT: Good morning.

1 MR. FINDLAY: Good morning, Your Honor. Eric  
2 Findlay, Doug Lumish, Jeff Homrig, Gabrielle Lahatte.

3 Ready to proceed.

4 THE COURT: Good morning. All right. I understand  
5 we've got a matter we need to take up before we begin the  
6 jury selection this morning. What's first?

7 MR. LUMISH: If we can address the issue we raised  
8 last night, Your Honor, yesterday afternoon.

9 THE COURT: Sure.

10 MR. LUMISH: Doug Lumish, Your Honor, for Apple.  
11 I'll try to be brief here.

12 The -- this issue goes back to the pretrial  
13 conference and the motions that proceeded that. There was  
14 the motion related to NSN that we raised, Apple raised, with  
15 concerns that the discovery we were getting from NSN was, as  
16 we put it in the briefing, being curated; that we were  
17 getting the documents that were good for them and not getting  
18 the documents that were not good for them.

19 We asked for documents that were related to  
20 Mr. Sebire, and in particular related to his interactions and  
21 work and collaboration with people on certain documents in  
22 the 3GPP RAN2 Working Group, and we got very little.

23 There -- Mr. Homrig can walk you through, there was  
24 a statement yesterday that we didn't ask for them, we didn't  
25 pursue them. And we've gone back to look and that's

1 incorrect.

2           We pursued them. We asked for them. We got some  
3 documents. Mr. Sebire testified that he searched for  
4 documents by looking in his hard drive. Nobody -- he didn't,  
5 anyway, search anywhere else inside of Nokia. He said his  
6 hard drive wasn't backed up to their systems, and he didn't  
7 have any correspondence that went back to the time period we  
8 were interested in.

9           Yesterday after the call with Your Honor, we got a  
10 production from Ericsson that included something on the order  
11 of 27 e-mails to and from Mr. Sebire, and there were some  
12 additional documents that were internal communications at  
13 Ericsson.

14           The e-mails included some attachments. And at  
15 least four of those attachments that we've identified so far  
16 bear directly on the question of invention and derivation,  
17 which as you know, is a very important defense to Apple.

18           Here, we had a hearing about it last time at the  
19 pretrial conference in response to a MIL trying to knock it  
20 out.

21           The documents -- I could hand them up if Your Honor  
22 would like.

23           THE COURT: Yes.

24           MR. LUMISH: I could show you the four that  
25 we've -- these four, as they go up, are ones that we have put

1 onto our new trial exhibit list we supplemented last night,  
2 and I can show them to you now.

3 May I approach, Your Honor?

4 THE COURT: Yes.

5 MR. LUMISH: I can go through each of them if you  
6 would like, Your Honor. I wasn't planning to.

7 What you'll see in there are e-mails back and forth  
8 and then two proposals -- or I should say two PowerPoint  
9 presentations from Ericsson. These presentations predate the  
10 filing of the patent-in-suit. They predate the provisional  
11 application. They predate the Ericsson proposal that Your  
12 Honor has heard about in other motions. And they refer to  
13 the exact same things that are being claimed as inventions in  
14 this case by CCE and Mr. Sebire.

15 As you know, the claims and the accusations in this  
16 case relate to what Mr. Sebire has called triggers for  
17 choosing between long and short form buffer status reports.

18 So how -- what criteria do you use to pick long or  
19 pick short. And he has claimed to be the sole and only  
20 inventor of those concepts.

21 It's been our position from the beginning of this  
22 case that he derived those from the working group at 3GPP or  
23 that they contributed -- people contributed to at least one  
24 requirement, at least one claim. And, so, under both  
25 theories the claims are invalid under 102(f) for derivation

1 or failure of inventorship.

2 The documents that I just handed up, if you'd like  
3 I could show you a couple of instances, they go right to this  
4 question.

5 If you look at Exhibit 756, for example, so this is  
6 now marked as DTX-756. This is a document we only got  
7 yesterday. You can see on the second page -- so DTX-75602  
8 the date -- this was a group effort called the MAC LTE  
9 workshop.

10 I think what Mr. Sebire's testimony will be is that  
11 this is a group that got together in order to discuss some of  
12 these triggers. And in order to present them in a  
13 presentation or a proposal to the RAN2 Working Group in a  
14 meeting that was coming up on November 5th.

15 All right. I'll try not to do all of this, Your  
16 Honor.

17 If we jump to -- if we jump to Page 6, please,  
18 Mr. Schmoller.

19 You'll see "need to update buffer status" towards  
20 the bottom. And it says: BSR is triggered when UL-SCH -- I  
21 believe that means uplink scheduling -- resources are  
22 allocated. And here's the important part -- and number of  
23 padding bits is larger than the BSR status.

24 That's exactly what we're being accused of doing  
25 for infringement in this case is what they call the bandwidth

1 trigger or the uplink capacity trigger in the original  
2 claims.

3 This is on an Ericsson document. You'll see in the  
4 bottom right-hand corner an Ericsson logo predating the  
5 alleged invention in this case.

6 And then if we go to page -- it's the internal  
7 Page 10. So that's DTX-756, Page 11. You will see the other  
8 trigger, the one that relates to looking at how many buffer  
9 groups need to report data to determine whether you go long  
10 or short.

11 As Your Honor knows, if you have more than one  
12 group under their theory of infringement, you use a long form  
13 buffer status report. If you have fewer than -- well, if you  
14 have fewer than two or if you have one group -- one buffer,  
15 you report the short.

16 You can see that right in the language here, it  
17 says how to choose the format based on how many groups need  
18 to report.

19 And if you go up a little bit for me, please,  
20 Mr. Schmoller, you'll see the reference to the two formats.

21 You've got a large one. You've got a short one.  
22 The short one is used if there's only one group to report.

23 This is -- I'm trying to pick my language  
24 carefully.

25 This is very powerful evidence of derivation of

1 inventorship problems by Mr. Sebire. We should have gotten  
2 this months and months ago when we asked for it from Nokia  
3 Siemens Networks. And I have no reason to say that counsel  
4 for CCE had it. I have no reason to say that they had it and  
5 withheld it.

6 But if CCE had it or could have gotten it as their  
7 relationship with NSN would have allowed, it's in their  
8 possession, custody, and control, it should have been  
9 produced a long time ago.

10 So with that, we're still struggling with what it  
11 is we should do here. We have tried to be narrow. We're not  
12 going to ask for anything extreme. We would like to  
13 supplement our trial exhibit list to include at least the  
14 four documents that I've handed up to Your Honor. There may  
15 be some more as we work through them in the next 24 hours or  
16 so.

17 Mr. Sebire, we understand, will at least begin his  
18 testimony today. We would ask that if he finishes his direct  
19 examination on both the jury and bench trial issues, that we  
20 be able to start his examination on cross tomorrow just to  
21 give us a little extra time to work these documents through.

22 It may very well be that we need additional relief  
23 down the line and don't know what that is. Maybe it's an  
24 order to show cause; maybe it's an adverse inference  
25 instruction. We still need to work through that. But we



1 need a day or two to consider that if Your Honor would permit  
2 it.

3 And then the only other thing I've got is if  
4 Mr. Sebire does hang over tonight, we would ask for about an  
5 hour to take a deposition of him on these newly-produced  
6 documents. We would keep it brief. We understand everybody  
7 is busy. But we just got these yesterday. We're still  
8 trying to figure out what they all mean.

9 That's what I had to say, Your Honor. I would ask  
10 if Mr. Homrig would come up -- he knows this better than I  
11 do -- and just walk you through the requests we made for  
12 these documents in the past because I know that was an  
13 argument made to you yesterday that we didn't pursue them  
14 diligently.

15 THE COURT: Okay.

16 MR. HOMRIG: Thank you, Your Honor. Jeff Homrig.  
17 Just -- just to be brief about this, the basic timeline on  
18 this is once the Court issued the letters rogatory, in that  
19 letters rogatory we called out specifically a number of joint  
20 proposals that we wanted to focus on in terms of standard  
21 setting proposals.

22 Those were called out, including the specific  
23 proposal that we referred to as the Ericsson joint proposal,  
24 to which all of these new documents relate.

25 During meet and confer, they asked us to narrow

1 those requests. We narrowed them down to ten. And again,  
2 this was one of those on there.

3 We had a back and forth with NSN's lawyers, and  
4 there were two sort of separate issues. There was the issue  
5 of what documents would they search for from Mr. Sebire. And  
6 there was the issue of what documents would they search for  
7 more generally with other folks.

8 What they told us in March was that they had  
9 already searched for Mr. Sebire, that they had found nothing  
10 that they would produce to us. It was all public or  
11 privileged, but they would go back and check.

12 They then specifically told us on May 3rd, in a  
13 letter that I can hand up to Your Honor, that they would go  
14 back and check for these specific types of proposals, they  
15 were doing that; that they would produce those to us by June  
16 9th.

17 They then made a production on June 9th. It -- it  
18 had a few documents in it. They continued to search. They  
19 made another production on June 29th. And then Mr. Sebire  
20 was produced for deposition on June 30th. Shortly after  
21 that, we moved in the NSN asking for relief.

22 So that's the basic dialogue. Your Honor, I would  
23 be happy to hand up the letter from their lawyer which  
24 confirms that they were still looking; that they had already  
25 searched but were searching again; and, in fact, were

1 searching for these specific kinds of documents.

2 THE COURT: Okay. Hand it up.

3 MR. HOMRIG: Thank you, Your Honor.

4 THE COURT: Response.

5 MR. CALDWELL: Good morning, Your Honor.

6 Reference to the NSN motion I think is a little  
7 gratuitous here. One thing that you haven't seen is a large  
8 number of the documents that were produced last night are  
9 internal Ericsson-only documents that wouldn't have even been  
10 in the possession of Mr. Sebire.

11 And for what it's worth, I understand from NSN's  
12 counsel that Mr. Sebire actually doesn't even have these  
13 documents. I mean, they were seven years ago e-mails. So I  
14 don't think it's a result of not searching. I think it's a  
15 result of not having.

16 But the fact that really what's happening is there  
17 are a large number of internal Ericsson documents, actually  
18 just shows that this starts at a different point in time. It  
19 starts with prior to the close of discovery AT&T subpoenaing  
20 Ericsson, and Apple subpoenaing Ericsson, arranging for a  
21 30(b)(6) document -- or a 30(b)(6) deposition, asking for  
22 documents, and then us spending the money to fly to Sweden to  
23 do that deposition.

24 None of this stuff was -- was produced, which was,  
25 of course, the purpose. And it was due at that time so that

1 the witness could be deposed.

2 And then we -- we went through this thing -- not to  
3 rehash, but we went through this thing last Thursday about  
4 how we were hours away from starting trial and Apple somehow  
5 didn't know any of the witnesses it was going to bring other  
6 than its hired experts.

7 Well, as a result of this, we have asked what's  
8 been going on with Ericsson. And what you actually see is  
9 that like two weeks ago Apple's counsel was setting up video  
10 conferences, arranging for video conferences to work with  
11 this witness they want to bring from Ericsson. And this is  
12 the result of Apple working with Ericsson to try to get  
13 someone to come over here and to testify.

14 They didn't know he was coming, someone that has  
15 just popped up from Stockholm now. And then on the night  
16 before, we get these documents, which should have been  
17 produced previously.

18 Just even under the notions of Rule 37, these  
19 documents are not timely. They were subpoenaed timely in  
20 discovery and just simply not produced. And getting them on  
21 the eve of trial is -- is not okay.

22 Also, I don't know that you really want a technical  
23 debate on the invention. We disagree with the  
24 characterization because there were differences just as a  
25 10,000-foot level between triggering a buffer status report,

1 something like there's more data and now we have to notify  
2 the base station, versus doing the steps that are in the  
3 claim to where you run through a particular routine to  
4 determine what type you send.

5           So they are very distinct concepts. And that's  
6 actually particularly important in the context of these  
7 documents because beyond the few that you've seen, even when  
8 you start getting to the internal Ericsson documents -- and I  
9 don't know if someone wants to seal the Court or whatever,  
10 but I'll stay at a very high level -- when you start getting  
11 to the ones that we just get last night, internal Ericsson  
12 documents, you actually see that distinction being  
13 significant between the actual technical differences in these  
14 two issues and who was taking the lead on different issues in  
15 their working group.

16           So what you're seeing is an incomplete picture of  
17 what was produced last night, all documents that should have  
18 been produced many months ago when we paid to go to Sweden to  
19 take this gentleman's deposition.

20           So, you know, I don't understand the concept of  
21 these threats of an order to show cause or an adverse  
22 instruction, but I think that the characterization is wrong.  
23 They are just not timely and should be excluded on that  
24 basis.

25           THE COURT: Thank you.

1 Any final word, Mr. Lumish?

2 MR. CALDWELL: And, Your Honor, I guess, let me  
3 just say, so I don't have to hop back up --

4 I'm sorry, Mr. Lumish. I'll just be a second.

5 I -- we -- I do think they should be excluded. And  
6 if for some reason they are not exclude as just simply  
7 untimely, the notion of now we -- they wouldn't even start  
8 their cross-examination, that seems crazy to me. We should  
9 be moving forward. They can start their cross-examination.

10 But more to the point, if anybody needs a short  
11 deposition, we do, of the gentleman that they have arranged  
12 to bring in from Sweden, who has suddenly produced all these  
13 things that he should have produced before we were there  
14 taking his deposition, and now there is a variety of internal  
15 Ericsson documents and things that under no world could we  
16 have had them.

17 MR. LUMISH: Thank you, Your Honor. Very briefly.

18 I just want to point out, again, that these are  
19 e-mails to and from Mr. Sebire. We're not talking about the  
20 internal documents at Ericsson. We understand that those  
21 were just produced yesterday, but these are documents that  
22 went to Mr. Sebire at his NSN address and came from  
23 Mr. Sebire at his NSN address.

24 And what you haven't seen is a declaration or  
25 anything else that suggests that those were searched for in

1 response to the materials Mr. Homrig walked you through in  
2 response to the discussions that we've had or that they were  
3 provided. These are documents -- I agree with  
4 Mr. Caldwell -- that should have been provided a long time  
5 ago but from NSN, who has a vested interest in this.

6 Now, a third party from another country didn't  
7 produce these documents, who has no relationship to the  
8 issues, has nothing to win here, I think is a -- is a  
9 diversion from the real issue.

10 As for the witness prep issue, I think Mr. Caldwell  
11 will probably bring this up every time he comes, and I'll  
12 have to tell Your Honor every time. We hadn't selected our  
13 witnesses. Mr. Stattin is somebody that I talked to on the  
14 telephone. I did it, I think -- I'd have to go look --  
15 within the context with the pretrial conference. As soon as  
16 we decided we were calling him, we let them know. They know.  
17 That's just another distraction from the issue.

18 We would ask that these documents be permitted to  
19 be added to the trial exhibit list; that they be permitted to  
20 be used in this trial; and that we have just a little bit of  
21 time. I'm talking about 18 hours, 24 hours, to process them  
22 a little further before we have to use them in  
23 cross-examination.

24 Thank you, Your Honor.

25 THE COURT: Okay. I am going to allow Defendants

1 to supplement with these four documents. However, when it's  
2 time to get into Mr. Sebire's cross, you'll start that if we  
3 get to it today. If it carries over to tomorrow, then that's  
4 fine. And I have a feeling that's likely, given everything  
5 we've got to get to before we get to our first witness today.  
6 No depositions either way.

7 And in light of the ruling, Plaintiffs, if there  
8 are documents you feel like you need in to complete the  
9 picture, I will entertain those as well, as they come up. So  
10 y'all continue to go through those, and let me know if you  
11 have any additions that you need.

12 Let me hand these back to you-all before it ends up  
13 in the bottomless pit that is my bench. Here you go.

14 MR. CALDWELL: Thank you.

15 THE COURT: What's next?

16 MR. FINDLAY: Your Honor, Eric Findlay on behalf of  
17 Apple. If we could briefly be heard on the financial issue  
18 that was raised with --

19 THE COURT: Let me let --

20 MR. FINDLAY: I'm sorry.

21 THE COURT: That's okay. He's sneaking back there.  
22 Let me let Plaintiffs take up one point, and then we'll kind  
23 of go back and forth here.

24 MR. LUMISH: Sorry, I think you handed me one of  
25 your documents.



1 THE COURT: I think it belongs to the Plaintiff.

2 Each of you have handed me up something. Yes?

3 All right.

4 MR. STEWART: Your Honor, Chris Stewart for the  
5 Plaintiff CCE. Sorry to sneak in here.

6 We had four outstanding disputes on the motions in  
7 limine, the additional motions in limine filed by the  
8 Plaintiff.

9 Pursuant to your instructions, we immediately, soon  
10 after the hearing on Thursday, reached out to Defendants to  
11 confer further on these and try to reach agreements. And as  
12 is has sort of been the pattern in the past, we got our very  
13 first response of any kind to that original e-mail after  
14 multiple follow-ups last night at 7:00 o'clock where the  
15 response was, we can't agree to certain parts of these  
16 additional motions in limine, and we have no explanation as  
17 to why.

18 So the outstanding disputes are with respect to  
19 Plaintiff's additional motions in limine, 11, relating to the  
20 presumption of validity not applying. And excluding any  
21 reference to that.

22 No. 12, which deals with trying equitable or legal  
23 issues in front of the jury.

24 No. 14, which deals with Apple introducing that the  
25 status quo has changed with respect to non-infringing

1 alternatives since the close of fact discovery.

2 And No. 17, which deals with source code access and  
3 not being able to imply that there was something improper or  
4 deficient in an expert's review of the source code, given the  
5 fact that there were stringent protective order measures that  
6 had to be taken.

7 And, Your Honor, I'm happy to discuss any of those  
8 further if you'd like more clarification. But as we have  
9 said in previous hearings, these are orders that have either  
10 been agreed to by Apple in the past or granted by Your Honor.

11 And I can show you those agreements or orders, if  
12 you'd like. And we feel like they are routinely granted and  
13 should be granted in this case.

14 THE COURT: Mr. Stewart, do you have a copy of the  
15 additional request on the limine points? I just don't have  
16 that right in front of me.

17 MR. STEWART: Sure. I have a copy with the four  
18 relevant ones highlighted up here.

19 THE COURT: Hand that up.

20 All right. Let me get a response.

21 MR. LEE: Good morning, Your Honor.

22 THE COURT: Good morning.

23 MR. LEE: Joseph Lee for Apple.

24 Now, with respect to addressing the individual  
25 MILs, I'm -- there are others that may speak to some -- on

1 the team that may speak to some of them individually. But to  
2 address the major point, which is, you know, the  
3 characterization of Apple's conduct with respect to the  
4 additional MILs, I just want to point a few things out for  
5 Your Honor.

6 So, first of all, it is simply not true that the  
7 first that they heard from us regarding the substance of  
8 these MILs that they are seeking was late last night.

9 These are MILs that have been discussed, as Your  
10 Honor is aware, they filed these requests for additional MILs  
11 along with the ten MILs that they're allowed to seek way back  
12 on -- I forget the exact date, but it's been several weeks  
13 now.

14 And we've been in dialogue with CCE regarding these  
15 MILs to attempt to reach agreement on them. And, in fact, we  
16 have reached agreement on some of them. We have reached  
17 partial agreement on others. But the point is that we have  
18 been engaging in a good-faith process with them. For them to  
19 characterize us as just staying silent and responding at the  
20 last minute, is just simply incorrect.

21 Now, with respect to the specifics regarding these  
22 MILs, as I think I explained to Your Honor, or at least  
23 someone explained to Your Honor at the pretrial conference  
24 last week, you know, we have concerns with regards to how  
25 these MILs have been written.

1           You know, we don't necessarily disagree with the  
2 substance of at least part of the MILs. In fact, we have  
3 reached agreement on a number. But there are others where we  
4 just simply feel that the way that the MILs are characterized  
5 are -- are unfair and don't -- are not tailored to the  
6 circumstances of the case.

7           And, you know, just to give you one example, the --  
8 they're seeking to have us not discuss that the presumption  
9 of validity doesn't apply.

10           Now, we certainly have no intention of arguing that  
11 the presumption of validity doesn't apply. I mean, that's  
12 the law. But what's also the law is that the burden in  
13 showing that the presumption of validity is -- can be  
14 overcome is lessened when you have art that's not previously  
15 been before the Patent Office. I mean, that's just the law.

16           And yet, they refuse to acknowledge that that's  
17 something that we can include. And so they just simply say,  
18 you're just not allowed to talk about presumption of  
19 validity. And we can't accept that because that's -- that's  
20 going to be a one-sided MIL. That's just one example, Your  
21 Honor.

22           THE COURT: Okay. Let me get a response on that  
23 one. We've got a jury coming in, in the next 20 minutes.  
24 We're going to rule on these. So y'all tell me what the  
25 dispute is, and let's see if we can figure out where we need

1 to be on each one.

2 MR. STEWART: Sure, Your Honor.

3 On that one, the presumption of validity doesn't  
4 apply. Saying otherwise is contrary to the law, and that's  
5 clear.

6 This other caveat that they want to add to it about  
7 the burden of proof being lessened if there wasn't art in  
8 front of the examiner, they've never shown us authority that  
9 expressly states that.

10 We have some disagreements as to whether that is,  
11 in fact, an accurate representation of the law. And we think  
12 since they agreed to the first part -- you just heard they do  
13 agree, that they cannot say the presumption of validity  
14 doesn't apply -- that MIL should be granted. And they can  
15 approach if they think they are getting into inappropriate  
16 insinuation that might violate that MIL.

17 THE COURT: All right. So, I mean, where is the  
18 dispute? Are you saying that they cannot say, hey, the PTO  
19 did not consider this piece of prior art, and that's relevant  
20 in your analysis on invalidity?

21 MR. STEWART: Your Honor, I think that part we  
22 wouldn't dispute, that they can talk about the fact that the  
23 PTO may not have considered a piece of art. They want an  
24 express exclusion from this MIL that says the burden of proof  
25 is less than -- is less than clear and convincing evidence

1 when the PTO has not reviewed the prior art. And we just  
2 dispute that that is, in fact, a clear statement of the law.

3 THE COURT: Okay. Response.

4 MR. LEE: Your Honor, that's just wrong. I -- I  
5 believe that we have given them authority.

6 For example, the i4i case -- and I don't have the  
7 exact cite in front of me, but Your Honor may very well be  
8 aware of that case -- is one example where the Court  
9 explicitly said that the burden is lessened -- or -- or what  
10 you need to show, the burden is lessened because of the fact  
11 that the art was not previously before the Patent Office.

12 THE COURT: Right. I am familiar with that case.  
13 I don't have it right in front of me so I don't have the  
14 exact language. I'll hold you to that language and no more,  
15 okay?

16 So I'm going to grant the motion in limine. You're  
17 not going to be able to argue the presumption of validity  
18 does not apply. You can talk about prior art not in front of  
19 the PTO in context and in line with the law set out in i4i  
20 and its progeny, okay?

21 MR. LEE: Thank you, Your Honor.

22 THE COURT: What's next?

23 MR. STEWART: Your Honor, the next one that was  
24 specifically addressed was equitable and legal issues. There  
25 was agreement as to certain of the equitable legal issues

1 listed in MIL 12, that they did say they would not present to  
2 the jury.

3 But, for example, they deleted from this MIL in  
4 their counter-proposal, Section 101, ownership,  
5 indefiniteness, untimely disclosure, things that are clearly  
6 purely legal or purely equitable issues that they have at  
7 least implied they're intending to present to the jury with  
8 no explanation as to how they're allowed to do that or why  
9 they would do that.

10 I think Your Honor referenced for practice that  
11 equitable issues are tried to the bench. Purely legal  
12 issues, obviously, are not for the jury. And so we just  
13 think that there's nothing controversial about saying these  
14 legal and equitable issues should not be in front of the  
15 jury.

16 THE COURT: Response.

17 MR. SIMS: Good morning, Your Honor. Cassius Sims  
18 for Apple.

19 The issue that we have with this is not in  
20 substance as with the other MILs. This is more an issue of  
21 overlapping issues that could be tried to the bench and to  
22 the jury. And how the MIL is phrased, we believe, that -- I  
23 think it would be misinterpreted or misused to preclude us  
24 from presenting issues such as to inventorship and  
25 derivation, which Mr. Lumish recently discussed, among other

1 issues that may cross over.

2 The factual underpinnings of those issues which are  
3 tried to the jury would have common ground with those that  
4 would be tried to the bench. And we want to ensure that  
5 we're not precluded from discussing those things that should  
6 be heard by the jury.

7 THE COURT: Okay. You are not precluded from  
8 discussing those things; however, anything that is purely an  
9 equitable or legal issue, leave it for the bench, all right?

10 What's next?

11 MR. SIMS: Your Honor, the next one is with respect  
12 to MIL 14. The undisclosed non-infringing alternatives, part  
13 of it is agreed.

14 But the second part, that since the close of fact  
15 discovery there has been a change in the status quo regarding  
16 Defendants' use of a non-infringing alternative. They  
17 wouldn't agree to that.

18 Presumably, they're going to get up here and say,  
19 hey, we didn't get any fact discovery on it. But we have now  
20 implemented one of those non-infringing alternatives we set  
21 out, and we didn't have a chance to get discovery on how that  
22 implementation occurred, how expensive it was, and what it  
23 took, whether it's actually, in fact, been implemented.

24 And so, you know, we think that the status quo as  
25 of the close of fact discovery is what should be at issue



1 here in trial.

2 MR. SANDFORD: Good morning, Your Honor. Brett  
3 Sandford for Apple.

4 With respect to the first part, as Mr. Stewart  
5 mentioned, we -- we agree and we do not intend to introduce  
6 any expert opinions that there is any non-infringing  
7 alternatives that were not disclosed in our expert reports.

8 We're going to stay within the bounds of that.  
9 We've told them that repeatedly since day one, and we finally  
10 reached agreement last night with that.

11 Our concern, and I believe Your Honor has been made  
12 aware of this through the -- through the different  
13 conversations we've had about these MILs, is a concern with  
14 the second language. CCE wants a little more here.

15 And our concern here, as we've expressed, is that  
16 if we agree to this second part that they would use that in a  
17 manner that would preclude our witnesses from testifying as  
18 to just the facts and that they would be able to, for  
19 example, if we agree that there had been no change in the  
20 status quo, then say, well, you haven't done anything since  
21 then.

22 And if they elicit that testimony, our witness  
23 should just be allowed to testify based on their personal  
24 knowledge.

25 And that's our concern there, Your Honor. We don't

1 seek to affirmatively introduce any of that evidence, but  
2 our -- our concern is, is the way -- is the potential for  
3 abuse there. And that's -- that's specifically why we  
4 haven't agreed to that second part, Your Honor.

5 THE COURT: Mr. Stewart, are you-all going to ask  
6 such questions?

7 MR. STEWART: Your Honor, I don't know for certain;  
8 but, obviously, that would be a reason they could approach  
9 and say the door has been opened and the -- when the MIL is  
10 granted.

11 THE COURT: I would caution you to be careful about  
12 that.

13 MR. STEWART: Yes, ma'am.

14 THE COURT: All right. Then I will -- I will grant  
15 the motion with the caveat that if you open the door, I'm  
16 going to let them answer truthfully.

17 MR. STEWART: Yes, your Honor.

18 THE COURT: All right.

19 MR. STEWART: Last one is with respect to source  
20 code access. Again, because of stringent protective order  
21 provisions in place with respect to review of source code, we  
22 think that in a reciprocal MIL, no party should be  
23 criticizing an expert because they didn't go and review  
24 source code frequently enough, because it was just costly and  
25 inefficient to send an expert out repeatedly, repeatedly, and

1 repeatedly.

2           They have agreed to only the part of this MIL that  
3 says we can't criticize source code -- or criticize for not  
4 reviewing source code that was not produced, but they still  
5 intend to criticize someone because of the number of times it  
6 was accessed, or the identity of the person reviewing, or the  
7 inability to access certain source code. And that's just  
8 simply unfair due to the protective orders.

9           THE COURT: Response.

10           MR. LEE: Your Honor, I think the best way to  
11 address this MIL is just tackle it head-on and explain  
12 exactly what our concern is.

13           We -- we don't intend to, and we don't want to --  
14 or we don't expect to question the witnesses regarding the  
15 fact that, you know, they didn't have a copy of the source  
16 code that they could keep on their sight 24/7 and, therefore,  
17 somehow their opinion is deficient.

18           But the thing that we're worried about, and the  
19 reason why we haven't been able to reach agreement -- and to  
20 be clear, we haven't reached agreement with part of the  
21 source code MIL, but the part that we can't reach agreement  
22 on, our concern is that they're going to use it against us to  
23 prevent us from testing the representations made and the  
24 things that the experts will say regarding what they did, in  
25 fact, do.

1           And it's not -- it's not a question of, hey, you  
2       didn't go look at this code every week during the case.  
3       That's -- that's not what we would be checking. What we  
4       would -- but what we should be allowed to do is given the  
5       level of access they had, what did they do with regard to  
6       that. And as well, if they made representations regarding  
7       the thoroughness of their source code review, then we  
8       shouldn't be precluded from testing that representation.

9           THE COURT: The part of the motion in limine that  
10      is not agreed to is denied.

11           What is next? Mr. Findlay?

12           MR. FINDLAY: Thank you, Your Honor. I'll try to  
13      be quick.

14           Your Honor will recall the motion to compel certain  
15      financial information from Mr. Bakewell which granted  
16      production of his salary percentage, equity in his firm and  
17      whatnot. And the order from Your Honor said that if this was  
18      not about admissibility, it was about discovery, we could  
19      talk about it further.

20           Mr. Hill and I spoke yesterday about this issue,  
21      and he did agree that they would approach before they got  
22      into anyone's salary or percentage of income in the firm.

23           Respectfully, what I wanted to raise with you is I  
24      think we -- we would prefer to have a more clear  
25      understanding as we go into trial because we think it

1 potentially affects more than just the experts. And we want  
2 to make sure we understand the Court's feelings on this.

3 And if I could very briefly put it into three  
4 categories from our standpoint, Your Honor.

5 A number of the witnesses in this case, including  
6 Ms. Wagner, I believe, CCE's corporate representative, are  
7 residents of California, which has a very strict, as I  
8 understand it, state constitution providing protections of  
9 privacy.

10 We think for those individuals, that would include  
11 the Apple folks, I believe, and like I said, Ms. Wagner, any  
12 reference into that, salaries, amount of money paid,  
13 percentage of equity, just shouldn't be permitted. If  
14 they -- if they have a financial interest in the case, in the  
15 outcome of the case, that's obviously fair game. And I think  
16 we would both agree with that.

17 The second category we would put it in is the  
18 third-party witnesses that Your Honor has heard about. This  
19 would be Mr. Stattin and Mr. Sebire. Questions to them  
20 regarding bias, interest, money they've made in connection  
21 with coming here or being here or in connection with their  
22 motivation, we think, is all appropriate.

23 The third category, the experts, is the one that  
24 was raised by the -- Mr. Bakewell's motion. And again, I  
25 think we're close in agreement, at least if I understand

1 Mr. Hill's position. We don't -- experts are all paid. We  
2 know they're all paid well. Both sides have them, Your  
3 Honor.

4 They can be inquired as to their billing rate, how  
5 much have they been paid by the client, both Mr. Green in  
6 terms of CCE or Acacia, Mr. Bakewell in terms of Apple, how  
7 much their firms have gotten.

8 But we just think there's a -- there's a bright  
9 line there in terms of when you're asking about someone's  
10 take-home pay or salary, how much money did you make last  
11 year to support your family, that, to us, just seems to cross  
12 a line. I think that could be seen as unseemly in some  
13 respects.

14 As to a percentage of your home income that came  
15 from Apple, might be a hypothetical question to Mr. Bakewell,  
16 I think that's fair. Similarly, with respect to Mr. Green, a  
17 percentage of your income that came from testifying for  
18 Acacia, I think that's fair.

19 But to get into the actual numbers of what somebody  
20 takes home to provide for their families, we would ask just  
21 simply be precluded.

22 Thank you.

23 THE COURT: Response.

24 MR. HILL: Thank you, Your Honor. May I use this  
25 podium?

1 THE COURT: Yes. Thank you.

2 MR. HILL: Your Honor, where this issue came up, as  
3 the Court knows, is in the context of the expert witnesses  
4 where we had this additional disclosure of information  
5 regarding their compensation.

6 And Mr. Findlay is correct. We have agreed that  
7 we're not going to go into the experts' take-home salary or  
8 their equity stake in their respective firms without first  
9 approaching the bench.

10 And I'll be candid with you, Your Honor. We're --  
11 we're leaving that door open about approaching the bench. I  
12 don't expect that's going to happen. I just don't see that  
13 as becoming relevant in the case. And if it does, we'll come  
14 talk to you about it before we go into it. So that shouldn't  
15 be an issue.

16 With regard to other witnesses, Your Honor, if a --  
17 again, our point is not to go into other witnesses' salaries  
18 except to the extent it becomes relevant in the course of the  
19 case.

20 There may be discussions or accusations made  
21 against certain witnesses that they have some financial stake  
22 or financial incentives for things they've done. And if that  
23 becomes a line of questioning from one side, it could make  
24 other persons' financial interest and maybe bonus structures  
25 or other things relevant as well.

1           We'll address those issues with the Court if we  
2           need to before we launch into them. But to have them  
3           excluded categorically at this point, when frankly that's not  
4           been an issue that's been discussed between the parties, it  
5           wasn't part of the expert compensation issues, it's very  
6           abstract. I don't know what they're shooting for, to be  
7           honest with you.

8           So we would certainly let the Court know that  
9           before we launch into somebody's take-home pay, we're going  
10          to come talk to you about it first.

11          THE COURT: Okay.

12          MR. FINDLAY: I can assure the Court the only thing  
13          we're looking for, Your Honor, is clarification of what is --  
14          what is acceptable, what is not acceptable. And we think we  
15          should have that before we begin evidence. That's the only  
16          reason I raise this.

17          THE COURT: It -- it sounds like y'all are close.  
18          It sounds like we are not going to get into anyone's  
19          take-home pay. We're likely -- we're not going to get into  
20          that at all. And if for some reason it becomes relevant,  
21          you-all will approach before you get anywhere close to it.

22          So what else concerns you, Mr. Findlay?

23          MR. FINDLAY: I get with -- that admonition to the  
24          parties. I think we can work with that, Your Honor.

25          THE COURT: Okay.



1 MR. FINDLAY: Thank you very much.

2 THE COURT: Very good.

3 MR. HILL: Thank you, Your Honor.

4 MR. MCMANIS: Your Honor, Jason McManis for CCE. I  
5 have two sets of objections to some of Apple's opening  
6 slides. And rather than mess with the document camera, if I  
7 might approach?

8 THE COURT: Certainly.

9 MR. MCMANIS: Your Honor, with respect to Apple's  
10 Slides 1.7 and 1.11, our objection here is to the image of  
11 the royalty stacking. And I know that Your Honor denied our  
12 motion in limine on that -- on that point, but we think this  
13 particular image is overly prejudicial and creates the  
14 perception that Apple has this stack of patents or other  
15 documents that they have a license to, sitting somewhere.

16 And -- and this is going to cause problems for them  
17 to be able to pay money to CCE.

18 And I think the corollary, Your Honor, would be  
19 if -- for damages slides, instead of putting a number of  
20 units up there, we had trucks -- semi-trucks full of iPhones  
21 to show that we have all these iPhones. We have -- we have  
22 no way of quantifying how many iPhones are in that truck. We  
23 have no way of quantifying how many stacks of paper there are  
24 there. And we just think it's prejudicial and confusing to  
25 the jury.

1 THE COURT: So your -- your objection to this  
2 particular slide is just the stack of papers?

3 MR. MCMANIS: Yes, Your Honor.

4 THE COURT: Okay. Response.

5 MR. HOMRIG: Thank you, Your Honor. Jeff Homrig.

6 I wish they had said this straightforward in the  
7 meet-and-confer because that's not what we're doing at all.

8 This is just intended to show how large the  
9 standard is. It's huge. And the point is, is that a part of  
10 this case that -- that -- or the part of the standard that is  
11 at issue in this case is just a small piece of that. So  
12 that's it. It's not a stack of patents. It's not a stack of  
13 Apple patents. So I can't imagine that there's an issue with  
14 demonstrating that this particular part of the standard is  
15 just a small part.

16 THE COURT: All right. I'm going to overrule the  
17 objection to this slide.

18 Mr. McManis, what's your objection to the other  
19 one?

20 MR. MCMANIS: Your Honor, with respect to 1.12 and  
21 1.13, they kind of go hand-in-hand. And I think the first  
22 slide, in and of itself, which appears to be how the patents  
23 ended up in CCE's possession, we don't really have a problem  
24 with that slide in isolation.

25 But what it looks like they're trying to do is

1 create this imagery that suggests that CCE bought a ticket to  
2 the courthouse. And we believe that that's properly excluded  
3 under the parties' agreed MIL 4.

4 And we did raise this specific issue last night.

5 And for that reason, we think that the slides  
6 together should be excluded. Or at least the second slide  
7 should be excluded because what we didn't hear from Apple was  
8 any reason why a picture of the courthouse is relevant if  
9 it's not used for that improper issue.

10 THE COURT: Okay. Response.

11 MR. HOMRIG: Thank you, Your Honor.

12 On Slide 1.12, the point here is simply that the  
13 patent transferred through Acacia, and Acacia transferred it  
14 to its subsidiary. That's it.

15 On the next slide, they filed in this courthouse.  
16 We're trying to the case in this courthouse. And my point is  
17 just they filed here. It's -- it's not an issue -- I think  
18 they were concerned during meet-and-confer that we were going  
19 to somehow disparage this district or do something like that.

20 We're not doing anything like that. The point is,  
21 is that they filed this lawsuit, and it's just a vehicle to  
22 talk about, frankly, what Apple did in response.

23 MR. HILL: Your Honor, can I just say one thing  
24 about that?

25 THE COURT: Sure.

1           MR. HILL: What I hear when I hear Mr. Homrig's  
2 explanation makes me worry about basically a covert venue  
3 attack. And I just want to make sure that's not what we're  
4 going to hear once we see that picture of the courthouse.

5           MR. HOMRIG: Not at all, Your Honor.

6           THE COURT: Okay. Well, with that representation,  
7 I'll let you keep this in your slide deck.

8           MR. HOMRIG: Thank you.

9           THE COURT: All right. What's next?

10           I understood from someone that -- I think the Court  
11 got one of the motion in limine points a little bit wrong.  
12 Is that -- Motion in Limine No. 5, the last part of No. 5, I  
13 think I am just incorrect about that; is that right?

14           MR. FINDLAY: I would never say the Court is wrong  
15 on anything, Your Honor.

16           THE COURT: I will. I'll do it for you,  
17 Mr. Findlay.

18           MR. FINDLAY: But we think maybe words got jumbled.

19           On that point, I think the parties were in  
20 agreement that we could talk about the other licenses, we  
21 could talk about the fact that they resulted from litigation.

22           And I am quoting from Mr. Stewart, who I agree  
23 with, there are inferences and arguments that you could make  
24 from that. His concern was that we were going to go back to  
25 the litigation itself and talk about the details of the

1 litigation, which we have no intention of doing. So I think  
2 we are all on the same page.

3 THE COURT: Good. Far be it from me to bust out an  
4 agreement with poor wording. So I am going to -- I'm  
5 striking the part of that MIL that's in parentheses, which I  
6 think is the problematic language.

7 MR. HILL: Thank you, Your Honor.

8 THE COURT: Okay. What else can I help you with  
9 before we bring in this jury panel?

10 Is there -- I got a note from my law clerk about  
11 somebody maybe wanting to do a little mini opening or an  
12 issue?

13 MR. FINDLAY: Thank you, Your Honor.

14 And I just was -- Mr. Hill indicated that they  
15 didn't want to do it. I didn't know what Your Honor's  
16 preference was. This was my first trial in front of Your  
17 Honor. Sometimes we're allowed to do a three- to five-minute  
18 mini opening just to explain the case. If that's your  
19 Court's preference, we would prefer that, but I understand  
20 Mr. Hill would rather not.

21 MR. HILL: That's correct, Your Honor. We believe  
22 that the time for opening statements is opening statements.  
23 We open with the jury this morning.

24 THE COURT: All right. I agree. Let's not do  
25 that.

1 MR. FINDLAY: That's fine. Thank you, Your Honor.

2 THE COURT: Sure.

3 MR. HILL: Can I ask one last question, Your Honor?

4 Does the Court have a preference about where we -- which  
5 podium we use for jury selection?

6 THE COURT: My preference is to use that -- that  
7 podium.

8 MR. HILL: The mic podium?

9 THE COURT: And it's sort of a -- sometimes we --  
10 sometimes we move this podium here because it's not a fixed  
11 podium. And, in fact, that will -- I usually sort of pull it  
12 up here where you all can see the panel and you can move it  
13 in such a way so it's sort of -- not the base podium, but  
14 this one that's sitting right here. And we'll -- we'll  
15 reposition that so that you can address the panel.

16 MR. HILL: Thank you, Your Honor.

17 THE COURT: All right.

18 MR. FINDLAY: Thank you, Your Honor.

19 THE COURT: And I know we've got a lot of folks in  
20 the audience today. I'm happy to see you all. We're going  
21 to bring the panel in, though, and they're going to need this  
22 whole side of the courtroom. So when we break, I just need  
23 y'all to get cozy over here for jury selection.

24 Anything else?

25 MR. SANDFORD: Yes, Your Honor. Brett Sandford for

1 Apple again.

2 We have a -- an objection to a bucket of slides, I  
3 guess you could say, for Mr. Sebire's direct examination. If  
4 the Court would like to hear those now or before he goes up.

5 THE COURT: Ms. Hardwick, is our -- is our panel  
6 ready downstairs?

7 COURTROOM DEPUTY: They're ready.

8 THE COURT: They're ready, okay.

9 Well, we're going to go ahead and get started this  
10 morning, and we'll take it up over the lunch break.

11 MR. SANDFORD: Of course, Your Honor.

12 THE COURT: All right?

13 MR. SANDFORD: Be happy to. Thank you.

14 THE COURT: We will be in recess awaiting the jury.

15 COURT SECURITY OFFICER: All rise.

16 (Recess.)

17 (Jury Panel in the Courtroom.)

18 THE COURT: Good morning, Ladies and Gentlemen.

19 Welcome to jury service in the United States  
20 District Court for the Eastern District of Texas. I am Judge  
21 Nicole Mitchell, and I'm very honored to have you all here  
22 today for jury selection.

23 You've already met some of our Court personnel  
24 downstairs, but I want to introduce you to a few folks in the  
25 courtroom before we begin.

1           So I've got with me today my courtroom deputy,  
2           Ms. Lisa Hardwick, down in front here; my court reporter  
3           Ms. Chris Bickham; my law clerk, Ms. Prachi Mahta; and our  
4           court security officer, Ms. Gail Mayes.

5           And so we're going to do jury selection this  
6           morning. We're about to begin the trial of a civil case.

7           Let me first thank you again for your service here  
8           today. I hope that you will feel like it is an honor to  
9           serve your country today rather than a burden.

10           This is a patent lawsuit in which the Plaintiff,  
11           who is Cellular Communications Equipment LLC, or CCE, claims  
12           that the Defendant, who is Apple, Incorporated, infringes its  
13           patent.

14           I and the parties will have more to say about that  
15           throughout the case, but I wanted you to just have a general  
16           idea of what the case is about.

17           I anticipate that the presentation of the evidence  
18           and the whole case is going to take five to six days, and I'm  
19           going to adjourn the case at lunchtime on Friday so that I  
20           can attend to another commitment that I have.

21           So I expect that this case will run until Tuesday  
22           or possibly Wednesday of next week.

23           Let me give you an overview of what will be  
24           happening over the next several days if you are selected as a  
25           juror in this case. Right now we're doing the beginning



1 phase of the trial, what we call voir dire examination of the  
2 jury panel.

3 And what we're doing is allowing the Court and the  
4 attorneys to ask some questions of you-all and make some  
5 decisions about you as a potential juror. This will probably  
6 take about two hours, maybe a little less.

7 And then each side is allowed to strike a certain  
8 number of jurors, and the first remaining eight jurors will  
9 be sworn in as the jury who will decide the case.

10 After jury selection, we will have opening  
11 statements by the attorneys for each side, followed by the  
12 presentation of the evidence.

13 You will receive the charge of the Court, some  
14 instructions on the law on the case. You will hear closing  
15 argument from the attorneys. And then the jury will retire  
16 to the jury room to deliberate and to reach a verdict.

17 The purpose of voir dire, as I mentioned, is to  
18 enable the Court to determine whether or not any prospective  
19 juror should be excused from jury service, either by the  
20 Court for cause or by counsel for the parties by way of a  
21 peremptory challenge, which is a challenge for which no  
22 reason need to be given.

23 "Voir dire" is a Latin phrase, which means "to  
24 speak the truth," which I know you will all do today in  
25 answering the questions.

1           Please listen carefully to the questions that I'm  
2 going to ask you and that the parties are going to ask you,  
3 and do not be timid about standing up and talking and  
4 answering the questions. It's very important that you fully  
5 answer any of the questions if they apply to you.

6           With that, we're going to get started. I'm going  
7 to get you talking and get you used to answering questions,  
8 and so we're going to have a little bit of an icebreaker.

9           I'm going to ask each of you, whenever you speak  
10 today, to stand up, to tell me your name, and then to answer  
11 the question each time.

12           So we're going to practice that right now. What  
13 I'm going to do is have each of you stand one by one, and  
14 you're going to tell me your name; the city where you live;  
15 your job; if you're retired, what your job used to be; if  
16 you're married, your spouse and his or her occupation; and my  
17 favorite part, your favorite thing to do in your spare time.  
18 All right?

19           So we're going to practice with Juror No. 1,  
20 Mr. Kinsman.

21           JUROR KINSMAN: My name is Adam Kinsman. I live in  
22 Henderson. I'm a teacher. I'm married. My spouse's job is  
23 being a teacher as well.

24           And I've never served on a jury, and my favorite  
25 hobby or after-school-type activities is listening to music

1 and collecting records.

2 THE COURT: Very good. Perfect.

3 JUROR FAULKNER: I'm Bruce Faulkner. I live in  
4 Tyler. Oil and gas production company. Married. I'd rather  
5 be playing golf.

6 THE COURT: Wait, Mr. Faulkner. What does your  
7 spouse do?

8 JUROR FAULKNER: She is an interior decorator.

9 THE COURT: Thank you.

10 JUROR JENNINGS: My name is Chris Jennings. I live  
11 in Mineola, Texas. I'm a mechanic with General Motors.  
12 Married. My wife is in retail. I've never served on a jury.  
13 Hobbies, drag race, electronics.

14 THE COURT: Thank you.

15 JUROR STODDARD: My name is Loreba Stoddard. I  
16 live in Longview. I am a guardian with -- well, it used to  
17 be DADS. Now we're with HHS. I'm married. George is a  
18 dentist.

19 And once I got picked for jury; but it went to  
20 settlement, so I didn't really have to do anything.

21 THE COURT: Do you remember if it was a civil case  
22 or a criminal case?

23 JUROR STODDARD: It was a criminal case in  
24 Longview.

25 THE COURT: Okay. What do you like to do in your

1 spare time?

2 JUROR STODDARD: Oh. Who has spare time?

3 THE COURT: I know.

4 JUROR STODDARD: Read.

5 THE COURT: Very good.

6 JUROR RISINGER: My name is Sandra Risinger. I  
7 live in Tyler. I am retired, a retired schoolteacher. I  
8 work part-time now at my church office. I am divorced.  
9 I have served on three juries, and they were so long ago, I  
10 can't remember whether they -- I think one was -- I think two  
11 were civil and one was criminal.

12 THE COURT: Did you reach a verdict in each of  
13 those juries?

14 JUROR RISINGER: Yes.

15 THE COURT: Were you ever the foreperson?

16 JUROR RISINGER: No.

17 THE COURT: Thank you.

18 Did you tell me what you like to do in your spare  
19 time?

20 JUROR RISINGER: Read.

21 THE COURT: Read. Okay.

22 JUROR BURNEY: My name is Larry Burney. I'm from  
23 Jacksonville. I am the pretreatment coordinator for the City  
24 of Jacksonville, which means I look at sewers all the time.

25 I am married. My wife is a retired schoolteacher

1 and now a professional quilter. I have served on a jury.  
2 I served when I lived in San Antonio. I was on a district --  
3 I guess it was -- it was a federal -- American -- ADA,  
4 Americans with Disabilities, I think. And that was settled  
5 out of court after about four days in the jury room, so...

6 THE COURT: What do you like to do in your spare  
7 time?

8 JUROR BURNEY: Work on my tractor.

9 JUROR GARLAND: My name is Donald Garland. I live  
10 in Kemp. I'm a maintenance inspector for TxDOT. I am  
11 married. My wife works at the lumberyard doing receiving.

12 And I've never served on a jury, and I really don't  
13 have much spare time for anything except for raising  
14 grandkids.

15 JUROR SCALLIONS: I'm Kathy Scallions, and I live  
16 in Canton. And I'm a pharmacy technician. I'm married, and  
17 my husband is retired.

18 And I have served on a jury in Canton. It was a  
19 criminal case; but while we were deliberating, they settled.  
20 And I spend a lot of time with my grandkids when I'm off.

21 THE COURT: Ms. Scallions, what did your husband do  
22 before he retired?

23 JUROR SCALLIONS: He was an equipment mechanic.

24 THE COURT: Thank you.

25 JUROR DREW: My name is Steve Drew. I live in

1 Lindale, Texas. I am an officer at a rigging and lifting  
2 company. My wife is a teacher in Lindale School District.

3 And I have never served on a jury.

4 THE COURT: What do you like to do in your spare  
5 time?

6 JUROR DREW: Spare time. Chase grandkids, mountain  
7 biking.

8 THE COURT: Thank you.

9 JUROR THOMAS: I'm Kevin Thomas. I live in Emory,  
10 Texas. My occupation is construction worker, installer. I  
11 am married. My wife is a student, office assistant at Texas  
12 A&M Commerce.

13 I've never served on a jury. And my spare time is  
14 just spending time with my family -- or my kids before they  
15 grow up too fast.

16 THE COURT: Thank you.

17 JUROR STATEN: Larry Staten. I live in Bullard.

18 I'm a retired mechanic working full time at a parts  
19 department. Married. My wife is a legal assistant.

20 And I have served on a couple of municipal juries,  
21 and I guess they were traffic tickets. I don't know what  
22 that makes a difference on. And in my spare time, I build  
23 things.

24 THE COURT: When you were on those juries, did you  
25 reach a verdict each time?

1 JUROR STATEN: Yes, we did.

2 THE COURT: And were you ever the foreman, the  
3 foreperson on the jury?

4 JUROR STATEN: Yes, on one of them.

5 THE COURT: Okay. Thank you.

6 JUROR WASHINGTON, JR.: Hartest L. Washington, Jr.  
7 I live in Tyler. My occupation is toolmaker at Trane.  
8 Single. I never have served on a jury. And I work on my old  
9 truck in my spare time.

10 THE COURT: Thank you.

11 JUROR STROUD: My name is Susan Stroud. I live in  
12 Longview. I'm retired. I am married, and my husband is a  
13 supervisor at Luminant.

14 And I have served on a jury before, and I had to be  
15 excused due to my mother getting sick and passing away, so...

16 THE COURT: So you didn't stay through the end of  
17 the verdict?

18 JUROR STROUD: No, ma'am.

19 THE COURT: Okay. What do you like to do in your  
20 spare time?

21 JUROR STROUD: I have grandkids, and I take care of  
22 family, elderly.

23 THE COURT: Thank you.

24 JUROR DAVIS, JR.: Bob Davis. I'm a regional sales  
25 manager for a Tyler Union, Division of McWane Company. I do

1 extensive travel. I live in Flint, Texas. And I am married  
2 to a juvenile probation officer here in Smith County and have  
3 been for quite awhile.

4 I have served on a civil jury, settled out of  
5 court. And I was on a criminal case. I never have been a  
6 jury captain, whatever you call them. And I too would rather  
7 be hitting a golf ball, and I do that very much.

8 THE COURT: In that criminal case, did you all  
9 reach a verdict?

10 JUROR DAVIS, JR.: Yes, we did.

11 THE COURT: Thank you.

12 JUROR PALMER: My name is Toni Palmer. I live in  
13 Gladewater. I am a stenographer. I am married. My husband  
14 is a locomotive mechanic. Never been on a jury. And my free  
15 time is pretty much being a taxi for my kids.

16 JUROR WADE: Hello. My name is Lauren Wade. I  
17 live in Troup. My occupation is I work at Suddenlink  
18 Communications. I am single. And I have served on a jury.  
19 And in my spare time, I just enjoy my kids.

20 THE COURT: On that jury, do you remember if it was  
21 a civil case or a criminal case?

22 JUROR WADE: It was a criminal.

23 THE COURT: And did you-all reach a verdict?

24 JUROR WADE: Yes, ma'am.

25 THE COURT: Were you the foreperson on the jury?



1 JUROR WADE: No.

2 THE COURT: Thank you.

3 JUROR STOCKMAN: My name is Valarie Nicole  
4 Stockman. I live in Seven Points. My husband is a State  
5 Park police officer.

6 And I have served on a jury before. It was a civil  
7 case. I was not the foreperson. And I -- in my free time, I  
8 like to kayak and fish.

9 THE COURT: Ms. Stockman, tell me what you do for a  
10 living.

11 JUROR STOCKMAN: I apologize.

12 THE COURT: No problem.

13 JUROR STOCKMAN: I work in the engineering  
14 department at Baylor Scott & White in downtown Dallas.

15 THE COURT: And that jury you were on, you-all  
16 reached a -- did you-all reach a verdict?

17 JUROR STOCKMAN: Yes, ma'am, we did.

18 THE COURT: Thank you.

19 JUROR SEALE: Yes. My name is Edward T. Seale. I  
20 live here in Tyler. I'm semi-retired. My wife, she's  
21 semi-retired as well. And, yes, I've served as an alternate  
22 on a jury.

23 THE COURT: Did you participate in the  
24 deliberations, or did you just watch the testimony, and then  
25 you were done when they went to deliberate?

1 JUROR SEALE: Right. I was done when --

2 THE COURT: The second one? Okay.

3 JUROR SEALE: Yes.

4 THE COURT: Do you remember if it was a civil or a  
5 criminal case?

6 JUROR SEALE: Yes. It was an armed robbery.

7 THE COURT: Okay. And you said you're  
8 semi-retired. So what do you do when you're not retired,  
9 when you're actually working?

10 JUROR SEALE: Oh, I'm sorry.

11 THE COURT: That's okay.

12 JUROR SEALE: I work for U.S. Silica.

13 THE COURT: And what about your wife?

14 JUROR SEALE: She works for Tyler Independent  
15 School District.

16 THE COURT: Thank you very much.

17 JUROR MENEFE: My name is Karen Menefee. I live  
18 in Flint, Texas. I am a nurse here in Tyler. I am not  
19 married. I have not served on a jury. And in my free time,  
20 I have grandchildren that I love dearly, and I play games and  
21 listen to music.

22 THE COURT: Thank you.

23 JUROR WEDGEWORTH: My name is Keith Wedgeworth. I  
24 live near Carthage, Texas. I'm an environmental health and  
25 safety coordinator for -- in the oil and gas field. I am

1 married. My wife is an at-home mom. I've never been picked  
2 to actually serve on a jury.

3 THE COURT: What do you like to do in your spare  
4 time?

5 JUROR WEDGEWORTH: I like to be involved with my  
6 kids' activities.

7 THE COURT: Thank you.

8 JUROR YOUNGBLOOD: I'm Dorcie Youngblood. I live  
9 in Grand Saline. I work at the Beto Unit as a teacher. I am  
10 married. My husband works as a maintenance boss at the  
11 Michael Unit. I've never served on a jury. I like to watch  
12 athletic events in my spare time.

13 THE COURT: Thank you.

14 JUROR PRICE: My name is Erika Price. I live in  
15 Bullard. I work at Dairy Queen on Broadway. I'm single.  
16 I've never served in a jury, and I like to hang out with  
17 friends.

18 THE COURT: Thank you.

19 JUROR GILL: Good morning. I'm Timothy Gill. I  
20 live in Smith County between Whitehouse and Chapel Hill. I'm  
21 a faculty member at Tyler Junior College. My wife is a  
22 retired public schoolteacher.

23 I've served both on a military court martial and  
24 briefly -- which I was the equivalent of a foreperson. I was  
25 the senior officer. And briefly on a criminal case here in

1 the county.

2 And in my spare time, I like to perform and record  
3 music.

4 THE COURT: In that criminal case, did you-all  
5 reach a verdict?

6 JUROR GILL: The defendant pled out.

7 THE COURT: Thank you.

8 JUROR MILLER: My name is Emmitt Miller. I'm from  
9 Fruitvale. I am sales manager for a heavy equipment auction  
10 company. I'm married. My wife is a schoolteacher.

11 And I have served on a jury. It was a county jury,  
12 and we did reach a verdict. I was not a foreperson. And in  
13 my spare time, I like to fish.

14 THE COURT: Very good.

15 All right. Great job. I knew y'all would make a  
16 good panel. You did a great job. So more of the same when  
17 we're asking you these question. Stand up, state your name,  
18 and Ms. Mayes will bring you the microphone, and we'll let  
19 you answer your question.

20 Let me say before we get started -- or go any  
21 further, if we -- if I or the attorneys ask you a question  
22 that maybe would elicit a response you're not comfortable  
23 sharing in front of the whole panel, I'd like you to just  
24 stand up, anyway, raise your hand, tell me your name, and  
25 tell me that you'd like to discuss the matter up at the

1 bench.

2 And what we'll do is, at the end, I'll call you up,  
3 and we can talk about that in more detail, not in front of  
4 everyone. The last thing I want to do is make you  
5 uncomfortable. If you don't want to talk about it, we'll  
6 take it up up here.

7 So what I'm going to do now is ask Counsel for the  
8 Plaintiff to introduce the client, counsel associated with  
9 the trial of the case, and any witnesses who are here or who  
10 you think may testify in the case?

11 Mr. Hill?

12 MR. HILL: Thank you, Your Honor.

13 Good morning, Ladies and Gentlemen. My name is  
14 Wesley Hill. I'm one of the lawyers representing the  
15 Plaintiff in this case, Cellular Communications Equipment  
16 LLC.

17 I want to introduce you this morning to our client  
18 representative, Ms. Cristin Wagner. The folks that are on  
19 the jury will see Ms. Wagner throughout the trial.

20 Ms. Wagner is the senior vice-president with Acacia  
21 Research Group, which we'll learn about -- a little more  
22 about here in a minute about Acacia.

23 Also here for the trial, Ladies and Gentlemen, is  
24 Mr. Brad Caldwell. Mr. Caldwell is a lawyer from Dallas,  
25 who's with a firm called Caldwell Cassady & Curry. His law

1 partner, Austin Curry, also here with us, also from Dallas.

2 And then Mr. Ed Nelson, which is with the Nelson  
3 Bumgardner law firm in Fort Worth.

4 I told you my name is Wesley Hill. I live here in  
5 Tyler. I practice with a law firm called Ward, Smith & Hill.  
6 We're based over in Longview, but we work -- have offices  
7 here in Tyler as well.

8 I grew up over in Murchison, so I'm familiar with a  
9 lot of areas you folks have listed here that you're from. We  
10 look forward to putting our case on to you and look forward  
11 to letting you hear the issue we have for you folks to  
12 decide.

13 THE COURT: Mr. Hill, any witnesses you want to  
14 highlight, anyone you think we might have that anyone would  
15 know or --

16 MR. HILL: Your Honor, I don't believe we have them  
17 in the courtroom here presently to introduce them to the  
18 jury.

19 THE COURT: All right. Well, let me ask you-all,  
20 on the people that Mr. Hill introduced, do you know any of  
21 these people, have any business dealings with them? Are any  
22 of them friends of yours? Anybody recognize a familiar face?  
23 I see one hand.

24 If you'll stand, Ms. Mayes will get the microphone  
25 to you.

1 Is this Mr. Drew?

2 JUROR DREW: Yes. Steve Drew.

3 My firm is currently involved in a legal action  
4 with the Plaintiff attorney's firm.

5 THE COURT: All right. Thank you, Mr. Drew.

6 Anyone else?

7 All right. Okay. I'm going to -- what I'm going  
8 to do now is ask the Defendants' counsel to do the same  
9 thing.

10 Mr. Findlay --

11 MR. FINDLAY: Yes.

12 THE COURT: -- if you'll just introduce yourself  
13 and everybody -- everybody at your table.

14 MR. FINDLAY: Thank you, Your Honor.

15 May I go to the podium there?

16 THE COURT: Yes. Thank you.

17 MR. FINDLAY: Thank you.

18 Good morning, Ladies and Gentlemen. My name is  
19 Eric Findlay, and I represent Apple in this case, and it is  
20 my privilege to do so.

21 Let me first start by introducing you to some of  
22 the people that you'll hear from and you'll see from Apple.

23 We have Ms. Heather Mewes, who's sitting here just  
24 next to you. Mr. Andy Song, Mr. Ash Upreti, and Mr. David  
25 Melaugh. These folks all work at Apple. I think you'll hear

1 from Ms. Mewes during the trial. They've come here from  
2 California to talk to y'all because this is an important  
3 case.

4 With me at counsel table is Mr. Doug Lumish and  
5 Mr. Jeff Homrig and Ms. Gabrielle LaHatte. They're from the  
6 firm of Latham & Watkins. Mr. Homrig and Mr. Lumish are from  
7 California. Ms. LaHatte is from Washington, D.C. And also  
8 we have Mary Noffsinger, and she is helping us out with jury  
9 selection.

10 I think there may be one of our witnesses in the  
11 courtroom.

12 Mr. Frappier, would you stand?

13 Mr. Mark Frappier is one of our -- what we call a  
14 technical witness. You'll hear from him later on. And we're  
15 happy to be here and look forward to presenting the case to  
16 the eight of you lucky folks that get selected.

17 Thank you.

18 THE COURT: All right. So --

19 MR. FINDLAY: Thank you, Your Honor.

20 THE COURT: Thank you, Mr. Findlay.

21 So I have the same question for you-all. Anybody  
22 recognize anyone, ever had any dealings with anyone? See any  
23 familiar faces?

24 All right. I see no hands.

25 So I am about to turn this over to the lawyers.



1 I've got a couple more questions to ask you, and my first one  
2 is this: If you're selected to sit on the case, will you all  
3 be able to render a verdict solely on the evidence presented  
4 at trial in the context of the law as I give it to you,  
5 disregarding any other ideas or notions or beliefs about the  
6 law that you may have in reaching your verdict?

7 Can you all do that? Can you all make a decision  
8 based on the evidence in light of the law that I give you?

9 Anyone feel like they cannot do that at this point?  
10 Raise your hand now.

11 All right. I've got one more question for you. Is  
12 there any other reason that suggests itself as to why you  
13 might not be the right person for this jury or you're just  
14 unable to sit on the jury for this length of time? Is there  
15 some urgent reason why you might not be able to serve?

16 One hand -- okay. Two hands.

17 All right. Let's see. We've got Mr. -- that's  
18 Juror No. 20.

19 JUROR WEDGEWORTH: Keith Wedgeworth.

20 THE COURT: Mr. Wedgeworth.

21 JUROR WEDGEWORTH: I'm still under a doctor's care,  
22 and I attend physical therapy, occupational therapy three to  
23 four times a week.

24 THE COURT: Okay. Thank you, Mr. Wedgeworth.

25 I saw Mr. Drew's hand come up as well; is that

1 right, Ms. Mayes?

2 JUROR DREW: I've been called to testify in a civil  
3 hearing next Tuesday with the Plaintiff's firm.

4 THE COURT: Thank you.

5 All right. And I saw one more hand.

6 If you will please stand. Ms. Mayes, I think, is  
7 bringing you the mic.

8 JUROR STROUD: My name is Susan, and I was told to  
9 go see an eye doctor, and I need to go get an eye  
10 appointment.

11 THE COURT: Okay. You're Ms. Stroud?

12 JUROR STROUD: Yes, ma'am.

13 THE COURT: All right.

14 All right. Thank you, everyone.

15 At this time, I'm going to recognize Plaintiff's  
16 counsel for the purposes of voir dire.

17 Mr. Hill?

18 MR. HILL: Thank you, Your Honor.

19 Good morning, Ladies and Gentlemen. How are y'all?  
20 I appreciate you being here this morning. I know that jury  
21 service is always an imposition on your time. We recognize  
22 that, and we don't take it lightly.

23 I want to tell you thank you right off the bat for  
24 taking the time out of your life to come help us resolve the  
25 legal issues that we can't resolve without your help.

1           And I want you to sincerely know, on behalf of the  
2 lawyers for CCE and on behalf of CCE, that we genuinely value  
3 your time and appreciate you being here, because without  
4 folks like you, you can't get legal disputes resolved in this  
5 country with some companies. So thank you and I appreciate  
6 you being here.

7           Let me start off by saying you've met the folks  
8 here. I want to give a little more of an introduction.

9           You met Ms. Wagner.

10          Ms. Wagner, please stand up.

11          This is Cristin Wagner. As I mentioned to you,  
12 Ms. Wagner is a senior vice-president with Acacia Research  
13 Group, and she as the corporate representative for CCE, will  
14 be here in the courtroom with us throughout the trial. Those  
15 of you who are on the jury will also hear her testimony in  
16 the case.

17          Thank you, Ms. Wagner.

18          Folks, I mentioned to you the name of our company,  
19 Cellular Communications Equipment Company, CCE for short.  
20 That's what we call it. CCE is the owner of approximately 57  
21 families of patents originally developed by Nokia Siemens  
22 Networks that are related to advanced cellular communications  
23 technologies.

24          We are here in this courtroom today with you folks  
25 over one of these patents in particular. This is a patent

1 that you'll hear people refer to by its last three numbers,  
2 the '820 patent. That's what this is. And that's what  
3 brings us to court here today is the '820 patent.

4 Now, as I mentioned, this name of our company,  
5 Cellular Communications Equipment, well, it indicates what  
6 the technology is about. This is a case that -- and a patent  
7 that relates specifically to what's known as LTE cellular  
8 technology.

9 Some of you folks may have noticed on your cell  
10 phones sometimes the letters LTE. That's the type of  
11 cellular network that is on at a particular time.

12 Acacia Research Group is the parent company of CCE.  
13 That's who Ms. Wagner works for. Acacia Research Group is  
14 owned by another company known as Acacia Research  
15 Corporation, which is a publicly traded corporation, it's  
16 traded on NASDAQ, that was founded in 1993.

17 Now, as you know by now, as the Judge told you and  
18 as I've told you, we're here today because we allege, CCE,  
19 that Apple is using the '820 patent without our permission  
20 and without paying for that use.

21 And so, essentially, this is akin to a trespass  
22 case. We're here today because CCE believes that Apple is  
23 trespassing on its rights, trespassing on its patent; and CCE  
24 needs your help to fix that. That's what brings us all to  
25 court today.

1           Now, Ladies and Gentlemen, the facts of our case  
2 will come out during opening statements, and now is not the  
3 time for me to tell you what I believe the evidence will  
4 show. The lucky eight of you that get to spend some time  
5 with us will get to hear all of that, probably more than you  
6 want.

7           For now, just know that CCE believes that Apple is  
8 using the invention covered by the '820 patent and that CCE  
9 seeks to recover royalties that Apple should have paid for  
10 that use.

11           As you might expect, we're here because Apple  
12 refuses to be accountable for its actions in this case. So  
13 that's what the case is about. That's what we're here for.

14           Now, as Judge Mitchell told you a little earlier,  
15 this is the voir dire section of the case. This is our  
16 opportunity to talk to you folks and for you to talk back to  
17 us. It's the only chance we get to talk to you or for you to  
18 speak back to us. Once the trial gets started, you have to  
19 sit there and listen to us, but we don't have a chance to  
20 interact with you.

21           I would ask and tell you that there's only one rule  
22 in jury selection, and that's speak up. And that would be my  
23 request to all of you today as we go through some of these  
24 materials.

25           You all did a great job responding to Judge

1 Mitchell's questions, but it's hard not to answer a Judge's  
2 question. You know, when they tell you to answer a question,  
3 you answer it.

4 I'm hoping you'll show me the same courtesy. And  
5 if I ask a question that bears on something pertaining to  
6 you, please just speak up.

7 As you folks learned downstairs, this is a patent  
8 case. You learned a little bit about the patent system.

9 One of the other things you did, though, is you  
10 took an oath. You took an oath to be a juror. Part of that  
11 oath is that you give truthful answers to questions. And so  
12 all I can ask for you here today is that you tell me -- if  
13 something pertains to you, that you tell me the truth.

14 Now, let me know by a show of hands, who owns more  
15 than one Apple device? More than one Apple device.

16 All right. Keep those hands up for me just a  
17 second.

18 We've got No. 1 here. That's Mr. Kinsman.  
19 Mr. Faulkner, Ms. Stoddard. Let's see who else we've got.  
20 There on the back, Mr. Drew. That's Ms. Stroud, Mr. Davis.  
21 Also there, No. 10, Mr. Thomas.

22 And then on the back corner there, we've got  
23 Ms. Palmer. Let's see, Mr. Wedgeworth and on the back row,  
24 Ms. Price, Mr. Gill, and Mr. Miller.

25 Did I get everybody? Did I miss anybody?

1 All right. Thank y'all. Y'all can put your hands  
2 down.

3 Also saw No. 5 there, Ms. Risinger.

4 Now, so you folks own more than one Apple device.

5 Let me ask you this question: How many of you consider  
6 yourself an Apple fan, you really like Apple?

7 All right. We've got No. 2, Mr. Faulkner.

8 Anybody else?

9 Listen, there's nothing wrong with it. I'm not  
10 going to -- nobody is going to criticize you. You just like  
11 Apple products. You're a big Apple fan.

12 No. 14 here, Mr. Davis. Also, Mr. Wedgeworth,  
13 No. 20. And then on the back row there, Ms. Price.

14 Now, you folks who consider yourself an Apple fan,  
15 I want to talk to some of you about it.

16 Let me start with you, Mr. Faulkner. What do you  
17 mean by that? Why do you consider yourself an Apple fan?

18 JUROR FAULKNER: Gosh, I guess it goes back to when  
19 my -- my son was always an Apple fan, and I refused to get, I  
20 guess, any kind of a smartphone until about eight or nine  
21 years ago, and I got my first Apple phone, and I really liked  
22 it. Then I got an iPad, so I have both of those at home.

23 MR. HILL: Uh-huh.

24 JUROR FAULKNER: I just like the product.

25 MR. HILL: Okay. Anything about that that you

1 think would start you out leaning one way or another in a  
2 lawsuit involving Apple?

3 JUROR FAULKNER: No.

4 MR. HILL: Okay. Let me ask you this question: Do  
5 you happen to own Apple stock?

6 JUROR FAULKNER: No.

7 MR. HILL: Does anybody on the jury happen to own  
8 Apple stock?

9 Okay. Mr. Drew, you own Apple stock?

10 Okay. That's okay, Ms. Mayes. I don't need to ask  
11 him about it.

12 Let me ask some of you this, and we'll start here  
13 with -- well, let's see. Let's start with Mr. Davis.

14 Mr. Davis, you indicated you're an Apple fan. You  
15 like the products?

16 JUROR DAVIS, JR.: I wouldn't say I'm -- excuse  
17 me -- I wouldn't say I'm an Apple fan. I just -- I happen to  
18 own four devices.

19 MR. HILL: Okay.

20 JUROR DAVIS, JR.: And I don't know any competitor,  
21 in my opinion, that can compete with the quality of the items  
22 that I've purchased.

23 My daughter has a MAC computer for college and a  
24 couple of iPads and several iPhones. But I don't trust the  
25 competitors, you know.



1 MR. HILL: Okay.

2 JUROR DAVIS, JR.: That's why I'm a fan, I guess.

3 MR. HILL: All right. Let me ask you this: Do you  
4 think that your affinity for Apple products would start you  
5 out leaning toward Apple in a lawsuit over patent  
6 infringement?

7 JUROR DAVIS, JR.: Absolutely not.

8 MR. HILL: All right. Let me ask you one other  
9 question. As a person who likes Apple products, how  
10 comfortable would you be, if the evidence supports it, of  
11 returning a verdict against Apple for possibly millions of  
12 dollars?

13 JUROR DAVIS, JR.: I wouldn't have a problem with  
14 it. I'd look at the facts of the case and make my decision  
15 on that.

16 MR. HILL: Okay. All right. I appreciate it, sir.  
17 Let me talk to a couple of other folks. Let's talk to  
18 Ms. Price back there on the back row, if we could.

19 Ms. Price, you're a fan of Apple products?

20 JUROR PRICE: Yes.

21 MR. HILL: Would you say you're just really, really  
22 rabid about Apple, or you just kind of like their stuff?

23 JUROR PRICE: I just kind of like their stuff. I  
24 own two Apple products.

25 MR. HILL: All right. Let me ask you the same

1 question I asked Mr. Davis. If the evidence supports it,  
2 would you be comfortable returning a verdict against Apple  
3 for potentially millions of dollars for patent infringement?

4 JUROR PRICE: No. No, sir.

5 MR. HILL: You wouldn't be comfortable doing that?

6 JUROR PRICE: No.

7 MR. HILL: Okay. So, even if the evidence in the  
8 case supported an award of that type, you would have some  
9 issue with that?

10 JUROR PRICE: (Nods head affirmatively.)

11 MR. HILL: Okay. Wouldn't be able to set that  
12 aside, you don't think?

13 JUROR PRICE: No.

14 MR. HILL: Okay. I appreciate it.

15 Is there anybody that agrees with Ms. Price?

16 And that's a good example of what voir dire is  
17 about. There's nothing wrong with anybody's answers. We all  
18 have points of view based on life experience.

19 Is there anybody that agrees with Ms. Price, who is  
20 a fan of Apple products, who would not be comfortable, even  
21 if the evidence supports it, returning a verdict against  
22 Apple for potentially millions of dollars for patent  
23 infringement? Anybody else feel that way?

24 Let me ask this question: Who thinks Apple is an  
25 innovator? Thinks Apple is an innovator.

1           Okay. We've got a number of hands here. Let me  
2 ask a couple questions. Let's start here on the front row.

3           Mr. Jennings? Mr. Jennings, you work for Dow  
4 Autoplex; is that right, Eddie Dow?

5           JUROR JENNINGS: Yes, sir.

6           MR. HILL: Do you think Apple is an innovator?

7           JUROR JENNINGS: I believe so. I bought an iPod  
8 years ago. It's still working --

9           MR. HILL: Okay.

10          JUROR JENNINGS: -- original battery. I know some  
11 day it's going to die, but --

12          MR. HILL: Yeah.

13          JUROR JENNINGS: -- it's still going.

14          MR. HILL: Yeah.

15          Let me ask you this: What do you think they're an  
16 innovator of, an innovator of what?

17          JUROR JENNINGS: I like the way that they've got  
18 everything compact. Seems like they were the first ones that  
19 had the smallest MP3 player, and that's what I was looking  
20 for.

21          MR. HILL: Okay. All right. Is there -- let me  
22 ask, who else --

23          I appreciate that, Mr. Jennings.

24          Who else thinks Apple is an innovator?

25          Let's see some hands. We'll go right next to you

1       there to Ms. Stoddard.

2               Ms. Stoddard, what do you believe Apple is an  
3 innovator of? Innovator of what?

4               JUROR STODDARD: Technology, I guess.

5               MR. HILL: Any specific kind of technology?

6               JUROR STODDARD: I know my kids love their MACs.  
7 They like that operating system.

8               MR. HILL: Uh-huh.

9               JUROR STODDARD: I don't know if I'm using the  
10 right words there --

11              MR. HILL: Right.

12              JUROR STODDARD: -- but they -- I can't use them.  
13 I have to use my old laptops.

14              MR. HILL: Right.

15              JUROR STODDARD: But they -- they really seem to  
16 like them.

17              MR. HILL: Okay. So innovator of computer  
18 technology; would that be fair?

19              JUROR STODDARD: I think so.

20              MR. HILL: Who else agrees with Ms. Stoddard, that  
21 Apple is an innovator of computer technology?

22              Okay. We've got several hands here.

23              Let me ask No. 21, Ms. Youngblood, Ms. Youngblood,  
24 do you think of Apple as being an innovator with respect to  
25 anything other than computer technology?

1 JUROR YOUNGBLOOD: Probably not. I -- I just know  
2 that Apple is an innovator. They're not the only ones. I  
3 wouldn't say they're the best ones. But I do believe that  
4 they have made a lot of innovations.

5 MR. HILL: Okay. All right. Let me ask this  
6 question: Is there anyone who thinks that Apple is an  
7 innovator when it comes to how cell phones communicate on  
8 cellular networks?

9 Is there anyone who thinks Apple is an innovator  
10 when it comes to how cell phones actually communicate on  
11 cellular networks? Anybody?

12 Now, Apple made its first cell phone in 2007, the  
13 iPhone. Who had a cell phone before 2007?  
14 Several of you?

15 All right. No. 24 there, Ms. Mayes, if I may.  
16 That's Mr. Miller?

17 JUROR MILLER: Yes, sir.

18 MR. HILL: Mr. Miller, you had a cell phone before  
19 2007?

20 JUROR MILLER: Yes, sir.

21 MR. HILL: Do you remember what kind it was?

22 JUROR MILLER: Not really. It was an old bag  
23 phone.

24 MR. HILL: All right. But it worked? You had a  
25 cellular network? The phone worked?

1 JUROR MILLER: Yes.

2 MR. HILL: All right. Okay. I appreciate it.

3 Let me see hands again. Who else had a cell phone before  
4 2007?

5 Let me ask it the other way. Who didn't have a  
6 cell phone before 2007?

7 We've got one here. That's No. 12.

8 Mr. Washington, you didn't have a cell phone before  
9 2007?

10 And then also on the end, Ms. Scallions; is that  
11 right?

12 JUROR WASHINGTON, JR.: No, I didn't.

13 MR. HILL: All right. Those were more peaceful  
14 times, weren't they?

15 JUROR WASHINGTON, JR.: Right.

16 MR. HILL: Now, folks, you heard earlier some of  
17 the lawyers in the case. I want to ask you again more  
18 specifically, does anybody know any of the lawyers?

19 Let's go through them again. First off, we have  
20 Latham & Watkins. That's the law firm that's representing  
21 Apple. The lawyers in this case, Mr. Doug Lumish right here,  
22 and Mr. Jeff Homrig, who are from the Latham & Watkins office  
23 just outside San Francisco.

24 Does anyone here have any connections or knowledge  
25 about Latham & Watkins or these lawyers?

1 No?

2 Thank you, Gentlemen.

3 Apple has hired a local lawyer in this case. His  
4 name is Eric Findlay. You met Mr. Findlay earlier. His law  
5 firm is called Findlay Craft. Findlay Craft. His other  
6 partners are Brian Craft, Debby Gunter, Walter Lackey, and  
7 Joey Seeber.

8 Does anyone here have any connection to or know any  
9 of those lawyers?

10 Does anyone here -- and let me say, I mean this in  
11 the broadest sense. And we had a good example of what we  
12 mean by connections to things.

13 Earlier -- Mr. Drew, if I can speak to you just a  
14 second.

15 Mr. Drew, you mentioned that you're familiar with  
16 my law firm, correct?

17 JUROR DREW: Yes, I am.

18 MR. HILL: And as I understand -- you and I have  
19 never met before, have we?

20 JUROR DREW: I've never met you.

21 MR. HILL: All right. As I understand it, your  
22 company has retained my law firm to help y'all with a legal  
23 matter; is that right?

24 JUROR DREW: Yes, sir. Your partner, Bruce Smith  
25 and Brett Miller.

1 MR. HILL: Bruce Smith and Brett Miller.

2 Okay. Is the fact that my law firm is representing  
3 your company in another unrelated case, do you think that  
4 would impact whether you think you could sit on this case?

5 JUROR DREW: No, sir.

6 MR. HILL: No? You think you could still be fair  
7 to both sides?

8 JUROR DREW: Yes, I could.

9 MR. HILL: All right. The other case -- and I  
10 don't want to get into your business. But the other case you  
11 have, what is it about?

12 JUROR DREW: It's a civil case involving former  
13 employees.

14 MR. HILL: Okay. Is it a -- does it have anything  
15 to do with what's known as intellectual property, similar to  
16 patents?

17 JUROR DREW: Yes, it does.

18 MR. HILL: What's it about?

19 JUROR DREW: It's a violation of a non-compete  
20 contract.

21 MR. HILL: Okay. So someone maybe has taken your  
22 IP, stolen your property in violation of a non-compete?

23 JUROR DREW: Yes.

24 MR. HILL: All right. I appreciate that, sir.

25 And just to make it clear, my firm is representing



1 your company against the person that stole that property; is  
2 that right?

3 JUROR DREW: Yes, sir, that's correct.

4 MR. HILL: Okay. Thank you, sir.

5 That's an example. Mr. Drew and I didn't know each other,  
6 but we had a connection through our law firm. And so we want  
7 to know if there's any connection between Mr. Findlay's firm,  
8 any of the lawyers in his firm, or anyone here.

9 Another connection where people know each other and  
10 don't sometimes know it, Mr. Faulkner -- let me talk to you  
11 just a second again, Mr. Faulkner.

12 Do you know Claire Henry?

13 JUROR FAULKNER: I do.

14 MR. HILL: Claire Henry is one of my other law  
15 partners.

16 JUROR FAULKNER: Okay.

17 MR. HILL: I tell you that just in fair disclosure.  
18 I don't want you to learn it later and feel uncomfortable.

19 Is there anything about the fact that you know  
20 Ms. Henry that you think would make you uncomfortable sitting  
21 on this jury, hearing a case where one of her law partners is  
22 involved?

23 JUROR FAULKNER: No.

24 MR. HILL: Do you think you would still be able to  
25 be fair to both sides?

1 JUROR FAULKNER: Yes.

2 MR. HILL: All right. I appreciate that.

3 Now, I heard during the introduction earlier --

4 Mr. Staten. Let me talk to you, Mr. Staten, if I may.

5 You're No. 11.

6 Mr. Staten, you mentioned your wife is a legal  
7 assistant; is that right?

8 JUROR STATEN: Yes, she is.

9 MR. HILL: Who is she a legal assistant for?

10 JUROR STATEN: With the White-Shaver law firm just  
11 down the street.

12 MR. HILL: Clay White's law firm?

13 JUROR STATEN: Uh-huh.

14 MR. HILL: Okay. Has she been there a long time?

15 JUROR STATEN: About 15 years.

16 MR. HILL: All right. Is there anything about  
17 that -- do you think she would have connections to the  
18 lawyers in the case that would make you uncomfortable sitting  
19 on this jury?

20 JUROR STATEN: No, not at all.

21 MR. HILL: All right. I appreciate that.

22 Now, let me ask this: There's a lot of people  
23 here. You met the Apple folks earlier. If I can get anyone  
24 that's associated with Apple as an employee, a witness, or a  
25 representative to stand up for us.

1 Folks, take a good look at these folks. I know we  
2 were moving fast a little bit earlier. Does anybody see a  
3 face they recognize?

4 No?

5 Okay. Thank you.

6 Thank you, folks.

7 Do any of you know Judge Mitchell? She lives over  
8 in Van. I think she's got nine small boys.

9 [Laughter]

10 THE COURT: Just four, Mr. Hill. Just four.

11 MR. HILL: I say that in jest. She only has four,  
12 which is plenty.

13 Nobody knows Judge Mitchell?

14 Okay. Do any of you know each other? Anybody see  
15 a fellow juror that you know from somewhere? Some of you are  
16 from similar towns.

17 Okay. We've got a couple of folks.

18 Right here, Mr. Washington, do you know somebody  
19 else on the panel?

20 JUROR WASHINGTON, JR.: Yes.

21 MR. HILL: Who is that?

22 JUROR WASHINGTON, JR.: Yes. I think I know him,  
23 Ms. Menefee.

24 MR. HILL: Ms. Menefee, you believe you know?

25 Okay. Ms. Menefee, do you think you know -- are

1 you going to claim him?

2 No?

3 All right. Well, I'll let y'all work that out.

4 Who else? Who else thinks they know somebody?

5 Right here? Okay. That's Ms. Youngblood, and you

6 believe you know Mr. Miller?

7 JUROR YOUNGBLOOD: I do.

8 MR. HILL: Okay. Where do you know Mr. Miller

9 from?

10 JUROR YOUNGBLOOD: Well, his wife goes to my

11 church.

12 MR. HILL: Okay. So I see he's from Fruitvale.

13 You're from Grand Saline. That's not very far.

14 JUROR YOUNGBLOOD: Yeah.

15 MR. HILL: All right. Very good.

16 Is there -- is there anything about that -- you

17 guys just know each other from a church connection? Is that

18 it?

19 Okay. All right. Anybody else?

20 No?

21 Okay. Now, Ladies and Gentlemen, as I've told you,

22 this is about -- this is a lawsuit. A lot of people have

23 strong feelings about lawsuits. So I want to talk about that

24 a little bit.

25 I want to know how many of you will agree with this

1 statement: There are too many lawsuits. Too many lawsuits.

2 I'm a lawyer, and I'll raise my hand to that.

3 Okay. Let's see here. We've got -- on the end,  
4 that's Mr. Garland here, Ms. Scallions, Mr. Drew.

5 Who else?

6 Ms. Youngblood, Mr. Ray (sic), Mr. Staten,  
7 Mr. Miller, and Mr. Wedgeworth.

8 Okay. There are a lot of lawsuits, folks. There's  
9 even frivolous lawsuits. There's, you know, people who claim  
10 they're hurt when they're not. There's abuses that go on in  
11 our legal system.

12 Luckily, we have a lot of good judges, like Judge  
13 Mitchell, who take care of those before they get anywhere.  
14 I want to know if anyone feels this way: That you don't  
15 believe in lawsuits, for whatever reason. Some people have  
16 personal feelings about it, have political reasons, have  
17 religious reasons even, where they don't feel comfortable  
18 sitting in judgment of others.

19 Is there anybody on the panel that for some  
20 personal or moral or religious belief just doesn't believe in  
21 the concept of lawsuits?

22 No?

23 Is there anyone who thinks there's too many patent  
24 infringement lawsuits?

25 Who agrees with this statement: There are too many

1 lawsuits, and either the Texas legislature or Congress should  
2 do something about it?

3 Anybody feel that way? Do you feel strongly enough  
4 about the fact that there's too many lawsuits that you think  
5 there ought to be legislative action on it?

6 Now, let me get a show of hands about something  
7 else that's kind of related to lawsuits. I want to ask you  
8 about the Government in general.

9 Who would agree with this statement: Our  
10 Government does more harm than good? Government does more  
11 hand than good.

12 Keep those hands up for me. No. 2, Mr. Faulkner.  
13 No. 6 here is Mr. Burney. Mr. Drew. And then No. 12 -- or  
14 11 -- excuse me -- Mr. Staten.

15 Anybody else, more harm than good?

16 I see Mr. Wedgeworth also.

17 I want to talk to you folks about that a little  
18 bit. Let's start here with Mr. Faulkner.

19 Mr. Faulkner, what motivates you to believe that  
20 the Government does more harm than good?

21 JUROR FAULKNER: Well, I mean, the question is a  
22 statement. Everything you see, you know, with the  
23 legislature, state, national, just too much intervention.

24 MR. HILL: Okay. All right. Have you had a bad  
25 experience personally with a Government agency?

1 JUROR FAULKNER: Not yet.

2 MR. HILL: Not yet? Okay. Well, let's hope your  
3 luck keeps up.

4 All right. I appreciate that.

5 Let me ask one last question. Is there anything  
6 about your feelings about Government in general that you  
7 think would make it hard for you to participate in one of the  
8 arms of our Government, which is being on a jury, part of the  
9 judicial service?

10 JUROR FAULKNER: No.

11 MR. HILL: No? Okay. Thank you, sir.

12 Mr. Burney, can I talk to you just a second?

13 How are you today?

14 JUROR BURNEY: I'm good.

15 MR. HILL: Good.

16 Let me ask you the same question. Has there been  
17 any bad experience in your life with a Government agency that  
18 causes you to hold that feeling?

19 JUROR BURNEY: Well, it depends on what you mean by  
20 "bad experience."

21 MR. HILL: Yes, sir.

22 JUROR BURNEY: I'm retired Navy, so I've had some  
23 not so good experiences with the VA and down like that.

24 MR. HILL: Right.

25 JUROR BURNEY: But I just think that there's too

1 much -- I'm Libertarian by nature. So the smaller the  
2 government, the better as far as I'm concerned.

3 MR. HILL: All right. All right. I appreciate it.  
4 Let me ask you one last thing. I'm sorry. I'm too quick.  
5 Don't let the microphone go.

6 Anything about those feelings that you think would  
7 cause you to lean one way or another in a lawsuit --

8 JUROR BURNEY: No.

9 MR. HILL: -- in a case like this?

10 JUROR BURNEY: No.

11 MR. HILL: Everybody would start even?

12 JUROR BURNEY: That's correct.

13 MR. HILL: You'd give them a fair shake?

14 JUROR BURNEY: That's correct.

15 MR. HILL: All right. I appreciate it.

16 All right. Let's see. Who else?

17 Mr. Staten there on the back -- on the middle row.

18 Mr. Staten, same question. You've mentioned -- is there  
19 anything -- any bad experience you've had with a Government  
20 agency?

21 JUROR STATEN: No, not --

22 MR. HILL: Just a general feeling?

23 JUROR STATEN: Just general feeling, too many  
24 regulations. It hurts small business, getting in people's  
25 lives too much.



1 MR. HILL: Right. All right.

2 Who else who raised their hand earlier agrees with  
3 Mr. Staten, and that generally describes the way they feel  
4 that way?

5 Mr. Wedgeworth, that captures you, too?

6 JUROR WEDGEWORTH: (Nods head affirmatively.)

7 MR. HILL: Is there anybody else that's had a bad  
8 experience with a Government agency specifically?

9 Okay. Let me ask you this question: Big companies  
10 are treated unfairly by the media. Big companies are treated  
11 unfairly by the media.

12 Anybody believe that?

13 Got a few hands here on the front row.

14 All right. Mr. Faulkner, you feel like big  
15 companies get a bad rap sometimes?

16 JUROR FAULKNER: I think so.

17 MR. HILL: Okay. Do you believe that feeling would  
18 cause you to be more sympathetic to a big company's cause in  
19 a case like this?

20 JUROR FAULKNER: Not particularly.

21 MR. HILL: All right. I appreciate that.

22 Next to him, Mr. Jennings. Do you kind of feel that way,  
23 too, Mr. Jennings?

24 JUROR JENNINGS: Yes, sir. I've worked with  
25 General Motors for 22 years, and I've seen a lot of re-calls

1 on cars that didn't quite make sense.

2 MR. HILL: Right.

3 JUROR JENNINGS: And people are scared to drive  
4 their cars. Yet they've been driving it for the last eight  
5 years and...

6 MR. HILL: So you think that gives the big company  
7 a black eye undeservedly?

8 JUROR JENNINGS: Right. And I understand they need  
9 to re-call certain items, but people overreact.

10 MR. HILL: Okay. All right. I appreciate it.  
11 Anybody else agree, share the feelings with Mr. Jennings and  
12 Mr. Faulkner?

13 Okay. Mr. Burney here, you think big companies get  
14 a bad rap in the media sometimes?

15 JUROR BURNEY: I think in a lot of cases, they do  
16 get a bad rap. If it wasn't for big companies, there  
17 wouldn't be big paychecks.

18 MR. HILL: Okay.

19 JUROR BURNEY: And that supports the economy as  
20 well as the small businesses. But somebody said before, due  
21 to all of the regulations and stuff for business, we've  
22 become an anti-business country, I believe, so...

23 MR. HILL: All right. Who agrees with Mr. Burney?  
24 Who else hears that and thinks, yeah, that makes a lot of  
25 sense to me?

1 Right back here. Ms. Youngblood, do you agree with  
2 that sentiment that --

3 JUROR YOUNGBLOOD: I do.

4 MR. HILL: Okay. All right. Anything specific  
5 about it you would add to what Mr. Burney had to say?

6 JUROR YOUNGBLOOD: It just seems like -- and I'm  
7 for all business, small or large. But I believe a lot of  
8 times the large business, people with money have a reputation  
9 of being the bad guys when they're not necessarily the bad  
10 guys.

11 MR. HILL: Okay. I appreciate that.

12 Who else shares that sentiment with Mr. Burney and  
13 Ms. Youngblood? Anybody else?

14 I think Mr. Wedgeworth, did I see your hand as  
15 well?

16 JUROR WEDGEWORTH: Yes.

17 MR. HILL: Anybody I'm missing?

18 Okay. All right. Let me ask this question:

19 Juries asked to award money damages do more harm than good.

20 Juries asked to award money damages do more harm than good.

21 Same kind of question as with our Government. Who  
22 thinks juries also generally do more harm than good? Anybody  
23 feel that way?

24 Let me ask, is there anybody here who's active with  
25 a member of a social justice organization like the ACLU, East

1 Texans Against Lawsuit Abuse, Texas Watch? Any of those  
2 organizations familiar to anybody?

3 No?

4 Anybody heard of those, are familiar with them?

5 Now, I want to talk to the few of you folks who may  
6 have been -- either you, yourself, or maybe an employer has  
7 had the experience of being a defendant in a lawsuit. Other  
8 than a divorce, if you've been a defendant in a lawsuit, let  
9 me see your hands, please.

10 Anybody? Anybody been -- either yourself or a  
11 company, you know, your employer or you were involved or the  
12 company you own been a defendant in a lawsuit?

13 No? All right.

14 I told you earlier that this is a case about money  
15 damages, could be millions of dollars. Is there anyone that  
16 feels like they may begin leaning towards the Defendants in  
17 this case, leaning toward Apple, simply based on the fact  
18 that CCE brought this lawsuit and will be asking for a lot of  
19 money?

20 And I can tell you right now, we'll be asking up to  
21 \$28 million in this lawsuit. Is there anybody that they hear  
22 that number, and you think, man, something must be up, and  
23 you lean toward Apple because of it? Anybody feel that way?

24 No?

25 Everybody agree that if the evidence supports it,

1 that they would be able to return a verdict for up to \$28  
2 million against Apple?

3 Let me ask you -- now, I know earlier, Ms. Price,  
4 you indicated that might make you uncomfortable; is that  
5 right?

6 JUROR PRICE: (Nods head affirmatively.)

7 MR. HILL: Okay. Do you still feel that way about  
8 it?

9 JUROR PRICE: Uh-huh.

10 MR. HILL: All right. Anybody else share  
11 Ms. Price's feelings? You just -- yes, ma'am,  
12 Ms. Youngblood. Tell me about what's on your mind.

13 JUROR YOUNGBLOOD: That's a lot of money.

14 MR. HILL: Yes, ma'am, it is.

15 JUROR YOUNGBLOOD: I just -- I don't know. I'm  
16 very conservative.

17 MR. HILL: Uh-huh.

18 JUROR PRICE: And I don't see that I would feel bad  
19 about a fair decision either way, except that being a lot of  
20 money.

21 MR. HILL: And do you believe that that just  
22 general conservatism and view that you have, might cause you  
23 to be reluctant to award that kind of damages even if the  
24 evidence supported it?

25 JUROR PRICE: It would need a lot of evidence to

1 support \$28 million.

2 MR. HILL: Do you think you would have a problem  
3 getting there?

4 JUROR PRICE: Prob- -- well, I hate to say it, but  
5 probably so, yes, sir.

6 MR. HILL: Okay. Listen, that's just being honest.  
7 I'm trying to seat a fair jury for my client, just like Apple  
8 is trying for theirs.

9 JUROR PRICE: I understand that.

10 MR. HILL: And all I can ask is honesty from folks.  
11 And I appreciate your honesty.

12 And, listen, I encourage people, if you feel that  
13 way, let me know. Is there anybody that shares  
14 Ms. Youngblood's feelings? Because there's certainly nothing  
15 wrong with her feeling.

16 Anybody else?

17 Let me ask it this way, and I'm going to run  
18 through everybody on this just to get a point of view: If  
19 the facts justify a large damages award, how uncomfortable or  
20 comfortable would you feel awarding millions of dollars in  
21 damages?

22 How uncomfortable or comfortable? Zero is very  
23 uncomfortable, very uncomfortable awarding millions of  
24 dollars in damages. Ten is very comfortable.

25 So think about your number. Zero, you would be

1 very uncomfortable. That sounds like that might be where  
2 Ms. Youngblood is coming from. Ten would be you would be  
3 comfortable with that.

4 Let's start here on the front, and I'm going to run  
5 through everybody, Ms. Mayes, so we may not need a  
6 microphone. We'll start here on the front.

7 Mr. Kinsman, what's your number?

8 JUROR KINSMAN: An eight.

9 MR. HILL: Eight? Okay.

10 Mr. Faulkner?

11 JUROR FAULKNER: Ten is fine with me.

12 MR. HILL: Okay. Mr. Jennings?

13 JUROR JENNINGS: It would be a ten.

14 MR. HILL: Ms. Stoddard?

15 JUROR STODDARD: I'm nine or ten.

16 MR. HILL: Ms. Risinger?

17 JUROR RISINGER: Eight.

18 MR. HILL: Mr. Burney?

19 JUROR BURNEY: Ten.

20 MR. HILL: Mr. Garland?

21 JUROR GARLAND: About six.

22 MR. HILL: All right. Back row here -- or second  
23 row. Ms. Scallions?

24 JUROR SCALLIONS: Probably a nine.

25 MR. HILL: Okay. Mr. Drew?

1 JUROR DREW: Ten.

2 MR. HILL: Mr. Thomas?

3 JUROR THOMAS: About a five.

4 MR. HILL: Mr. Staten?

5 JUROR STATEN: Probably about a six.

6 MR. HILL: Mr. Washington?

7 JUROR WASHINGTON, JR.: Ten.

8 MR. HILL: Ms. Stroud?

9 JUROR STROUD: Ten.

10 MR. HILL: Mr. Davis?

11 JUROR DAVIS, JR.: Ten.

12 MR. HILL: Ms. Palmer?

13 JUROR PALMER: Five.

14 MR. HILL: Mr. Wade -- or excuse me -- Ms. Wade?

15 JUROR WADE: About a seven.

16 MR. HILL: Okay. Ms. Stockman?

17 JUROR STOCKMAN: About a 10.

18 MR. HILL: Mr. Seale?

19 JUROR SEALE: Ten.

20 MR. HILL: Ms. Menefee?

21 JUROR MENEFEES: Seven.

22 MR. HILL: Mr. Wedgeworth?

23 JUROR WEDGEWORTH: Ten.

24 MR. HILL: Ms. Youngblood?

25 JUROR YOUNGBLOOD: Zero.



1 MR. HILL: All right. And then on the back here,  
2 we've got Ms. Price?

3 JUROR PRICE: About a five.

4 MR. HILL: Mr. Gill?

5 JUROR GILL: I'm going with 9.5.

6 MR. HILL: All right. And Mr. Miller?

7 JUROR MILLER: Ten.

8 MR. HILL: And, Your Honor, I get up here and get  
9 lost in time sometimes. Will you let me know when I have  
10 five minutes left?

11 THE COURT: I will.

12 MR. HILL: Thank you, Your Honor.

13 Now, folks, I want to talk to you about patent  
14 licensing a little bit. Patents are a lot like private  
15 property, a lot like mineral rights, in fact. They can be  
16 bought and sold.

17 You'll learn that the patents in this case were the  
18 result of inventions by a company called Nokia Siemens  
19 Networks. Nokia Siemens Networks. That's who invented the  
20 '820 patent. Those of you who serve on the jury will get to  
21 hear from the inventor from Nokia Siemens.

22 Eventually, CCE acquired the '820 patent from NSN.  
23 That's what people call Nokia Siemens Networks for short.  
24 You'll hear from NSN.

25 Is there anyone that's heard of Nokia or Nokia

1 Siemens?

2 Most folks?

3 All right. Anybody who hasn't? Let me ask it that  
4 way.

5 No? All right.

6 Is there anyone that has positive or negative views  
7 about Nokia Siemens? Have a view one way or the other?

8 All right. We've got a hand or two back here.

9 No. 17. That's Ms. Stockman? Yes, ma'am.

10 JUROR STOCKMAN: I know when you mentioned earlier  
11 about the cell phones before 2007, that was my first cell  
12 phone, and it's still working.

13 MR. HILL: Was it a Nokia? It still works today?

14 JUROR STOCKMAN: Yeah. It was a little square one.  
15 My mom uses it.

16 MR. HILL: Let me ask you a question while you're  
17 up, Ms. Stockman. You mentioned earlier that you work in the  
18 engineering department at Baylor; is that right?

19 JUROR STOCKMAN: Yes, sir. I work at the service  
20 desk. We take all of the calls.

21 MR. HILL: Is the engineering department like their  
22 physical plant, or what is that?

23 JUROR STOCKMAN: Well, what it is, is we take all  
24 of the calls for all of the Baylor hospitals --

25 MR. HILL: Uh-huh.

1 JUROR STOCKMAN: -- meaning that -- all of the  
2 lights out and all of the physical engineering parts.

3 MR. HILL: Okay.

4 JUROR STOCKMAN: So AC, electrical, flooding, fire,  
5 all of that stuff.

6 First, we give it to our service desk, and then we  
7 dispatch it out to the technicians or whoever needs to come.

8 MR. HILL: All right. Anything about that early  
9 Nokia cell phone that will make you lean one way or another  
10 in this case?

11 JUROR STOCKMAN: No, sir.

12 MR. HILL: All right. Anybody else have a strong  
13 view, positive, negative, you just have some kind of opinion  
14 about Nokia Siemens Networks or Nokia?

15 No?

16 Now, folks, CCE is a licensing company. Let me  
17 tell you what that means. That means we do not make products  
18 like Apple does. We don't make and sell cell phones or make  
19 and sell products.

20 What we do is we're in the business of licensing  
21 the rights to the patents that we own to people who want to  
22 use the inventions or the technologies that are owned by CCE.  
23 That's what we do.

24 Is there anyone who feels funny about that? You  
25 think: You know, that doesn't sound right to me. You've got

1 a patent on something, but you don't actually make the  
2 product yourself that practice the patent.

3 That notion give anybody concern?

4 Is there anybody that feels like, you know, kind  
5 of -- in other words, if you don't use it, you ought to lose  
6 it? If you don't use it, you lose it?

7 THE COURT: Five minutes, Mr. Hill.

8 MR. HILL: Thank you, Your Honor.

9 Now, I want to talk to you a little bit about  
10 burdens of proof in this case. The burdens of proof, you'll  
11 hear about two of them. You'll hear about one called the  
12 preponderance of the evidence standard. That's the standard  
13 of proof that means more likely true than not true.

14 If you have the Scales of Justice, it means you  
15 just tip them a little bit one way or the other. If you can  
16 imagine a football field, it would mean getting past the 50  
17 yard line. That's preponderance of the evidence.

18 Ladies and Gentlemen, that's the burden of proof  
19 that CCE has to carry to prove its claims of infringement and  
20 damages in this case, preponderance of the evidence.

21 There is a second burden of proof you'll hear about  
22 in this case. We heard it in the patent video this morning.  
23 It's called clear and convincing evidence. That's the burden  
24 of proof that means something has got to be highly likely,  
25 really got to tip those scales.

1           If you imagine the football field analogy again, it  
2 might mean getting down to the other team's red zone, okay?  
3 That's the burden of proof that Apple must carry to try to  
4 invalidate the '820 patent, which is something they're going  
5 to try to do.

6           They've got a number of defenses in this case.  
7 They're going to say: We don't do it. Yeah, but it's not  
8 worth a lot of money. Yeah, but you didn't claim it right.  
9 Yeah, but it's no good, okay?

10           They've got to prove invalidity by a higher burden  
11 of proof than we have to prove infringement and damages. And  
12 there's a reason for that. The reason for that is because  
13 the Patent Office has examined that patent, and that creates  
14 a presumption that it's valid.

15           Now, the clear and convincing evidence standard is  
16 a higher burden. That's the same burden of proof the courts  
17 use, for instance, if they were going to civil commit  
18 somebody against their will.

19           If somebody needed to be committed to a mental  
20 institution, you would have to prove that by clear and  
21 convincing evidence to take their rights away and put them in  
22 that institution. It's a higher burden.

23           Is there anybody that's served on a jury before  
24 that's applied the clear and convincing evidence standard?

25           Yes, sir. Right here, Mr. Burney. You have? Tell

1 me about that, Mr. Burney.

2 JUROR BURNEY: It was a disabilities claim. A  
3 group of handicapped people were suing a physicians group  
4 because they had claimed that they were being discriminated  
5 against because they were handicapped.

6 MR. HILL: Okay. And did you have to apply that  
7 burden in that case?

8 JUROR BURNEY: Yes.

9 MR. HILL: Did that pose any issue for you?

10 JUROR BURNEY: No.

11 MR. HILL: All right. Is there anybody that thinks  
12 it's unfair; it's unfair that CCE has a lower burden to prove  
13 infringement and damages than Apple has to prove to try to  
14 invalidate this patent? Does that notion sound wrong to  
15 anybody?

16 All right. I've got limited time left, and I want  
17 to learn some more information about -- as much -- as much as  
18 I can about you folks.

19 THE COURT: Mr. Hill, you do have limited time, but  
20 I've told you wrong. You're at 38 minutes, so you've got a  
21 few more minutes than --

22 MR. HILL: About seven minutes, Your Honor?

23 THE COURT: Yes, sir.

24 MR. HILL: Okay. I got a little nervous when you  
25 told me that.

1 THE COURT: Sorry about that, yeah.

2 MR. HILL: So you folks probably got excited I only  
3 had five.

4 JUROR: You just used up one.

5 MR. HILL: So let's talk a little bit -- I want to  
6 know if you have a bachelor's degree. Please raise your  
7 hand. I'm going to run through each of your numbers here.  
8 Just keep your hands up.

9 No. 1, 2, 4, 5, 6. That would be -- going back  
10 here, No. 9, 14.

11 And the next row here, Mr. Wedgeworth, you're 20,  
12 21.

13 And then on the back row, 23 and 24.

14 Okay. Thank you.

15 Who has an advanced degree?

16 Got a few advanced degrees. 5, 6, 20, 21, and 23.

17 All right. Regardless of whether you received a  
18 degree, who has studied or taken classes in cellular,  
19 computer, or other types of technology? Regardless of  
20 whether you have a degree, taken classes.

21 Mr. Gill, that's you on the back row. I see your  
22 hand.

23 Who else?

24 No. 3. That's Mr. Jennings.

25 Anybody else studied cellular, computer, or other

1 type of technology?

2 Let me ask for the teachers. Let me see the hands  
3 of the teachers I saw earlier.

4 What do you teach?

5 JUROR KINSMAN: Third grade elementary.

6 MR. HILL: Mr. Kinsman, third grade elementary?

7 JUROR KINSMAN: Yes, sir.

8 MR. HILL: Okay. Who else do we have?

9 No. 5. That's Ms. Risinger. What did you teach?

10 JUROR RISINGER: I'm a retired teacher. I taught  
11 eighth grade American History.

12 MR. HILL: All right. Who else do we have?

13 Yes, sir. Mr. Burney?

14 JUROR BURNEY: I was a business instructor at  
15 Jacksonville College for about eight years.

16 MR. HILL: Okay. Who else?

17 Yes, ma'am. Ms. Youngblood?

18 JUROR YOUNGBLOOD: I'm a retired Texas public  
19 schoolteacher for 33 years, and then -- but now I'm teaching  
20 in the Texas Department of Criminal Justice, in the prison  
21 system.

22 MR. HILL: Okay. Thank you very much.

23 And we had one other. Mr. Gill, yes, sir.

24 JUROR GILL: I currently teach information  
25 technology support for entry level IT technicians at Tyler



1 Junior College.

2 MR. HILL: All right. Thank you, sir.

3 Let me ask this: I want to know about your commute  
4 today. How many of you, it took you approximately 60 minutes  
5 to get to the courthouse or more? 60 minutes or more. Let's  
6 see those hands.

7 No. 7, No. 8, No. 10, No. 13, 17, Mr. Wedgeworth  
8 there, 20, 21, and 24.

9 Folks, if it took you that long to get here today  
10 and you had to do that every day, morning and night, for the  
11 next five to seven days, for whom would that cause a hardship  
12 that you think it would be such a hardship it would distract  
13 from your ability to be on this jury? Does anybody feel that  
14 way?

15 Yes, sir. No. 7. Mr. Garland, you came from Kemp.  
16 That's the other side of Cedar Creek Lake, right?

17 JUROR GARLAND: Yes, sir. It could possibly be a  
18 hardship. My wife and I are raising the two grandchildren.  
19 One of them is kind of borderline special needs. We never  
20 know when we might need to go to the school to get him or his  
21 sister. So I don't know from day to day --

22 MR. HILL: Yes, sir.

23 JUROR GARLAND: -- where I'm going to be or what  
24 I'm doing. That's the reason I have no spare time.

25 MR. HILL: Do you think that uncertainty and being

1 that far away from home for this period of time would cause  
2 you to have trouble concentrating on the case because you  
3 would be concerned about what you might be missing?

4 JUROR GARLAND: Well, I'm every day wondering if  
5 I'm going to need to go get the boy. I mean, I could  
6 probably do it; but we never know when we're going to get a  
7 call to come to the school to handle it.

8 MR. HILL: Okay. I appreciate it.

9 Anybody else have a similar circumstance where this  
10 drive is going to be a hardship to the extent it would make  
11 it hard for you to serve on this jury?

12 All right. Well, I believe I have about three  
13 minutes left, so I want to cover just one or two other  
14 topics.

15 Is there anybody who's sitting out there who's  
16 listened to the questions we've asked so far and just feels  
17 like: You know, this isn't the type of case for me, or this  
18 isn't something I want to do; I want out of here in the worst  
19 way? Is anybody feeling that way right now?

20 Mr. Washington, are you ready to go?

21 JUROR WASHINGTON, JR.: Yes, sir.

22 MR. HILL: All right.

23 JUROR WASHINGTON, JR.: Yep.

24 MR. HILL: Have you got better things to do than  
25 this?

1 JUROR WASHINGTON, JR.: Right.

2 MR. HILL: I understand. I understand.

3 Anybody feel the opposite, thinks: You know, what;  
4 this sounds kind of fun; I might be interested to sit on a  
5 patent case and hear about these things?

6 A couple of hands.

7 Yeah. No. 17. That's Ms. Stockman. Sound kind of  
8 interesting?

9 JUROR STOCKMAN: Yep.

10 MR. HILL: All right. Mr. Gill, are you the same  
11 way?

12 JUROR GILL: (Nods head affirmatively.)

13 MR. HILL: Great.

14 Folks, let me ask you one other question.

15 And, Your Honor, may I touch base on the clock  
16 again?

17 THE COURT: Two minutes.

18 MR. HILL: Let me ask a couple of follow-ups with a  
19 couple of you specifically.

20 Mr. Davis, I made a note earlier, you mentioned  
21 that you work for Tyler Union McWane. Is that the old Tyler  
22 Pipe? Is that McWane at Tyler Pipe?

23 JUROR DAVIS, JR.: McWane is the parent company of  
24 Tyler Pipe, Tyler Union, and 20 other different companies.

25 MR. HILL: Yes, sir.

1 JUROR DAVIS, JR.: McWane is the parent company in  
2 Birmingham, Alabama, and I work for Tyler Union, which is  
3 clean water utility fittings, ductile iron --

4 MR. HILL: Okay.

5 JUROR DAVIS, JR.: -- is what I do. I sell that.

6 MR. HILL: Okay. So you're a salesman for --

7 JUROR DAVIS, JR.: I'm a sales manager for the  
8 Southeast Texas section, be Eastern Texas, Louisiana,  
9 Arkansas, Mississippi, and parts of Alabama.

10 MR. HILL: All right. Are you actually employed --  
11 I guess you're employed by McWane; is that right?

12 JUROR DAVIS, JR.: McWane is who I -- yes.

13 MR. HILL: Yes. Okay.

14 So you work out here --

15 JUROR DAVIS, JR.: My paycheck has got McWane on  
16 it, but Tyler Union signs it.

17 MR. HILL: I gotcha.

18 Does your work out here have anything to do with  
19 this facility, the one on 69 going out --

20 JUROR DAVIS, JR.: Yes, sir. Yes and no. Our  
21 corporate office, our corporate execs are there --

22 MR. HILL: Uh-huh.

23 JUROR DAVIS, JR.: -- three of them and the two  
24 biggest ones are in Birmingham, Alabama. I office out of my  
25 house and travel. So I do not have an office here in Tyler

1 except for my residence.

2 MR. HILL: Now, I know the Steel Workers Union out  
3 here, the McWane folks were always union, the employees at  
4 least. Management weren't.

5 Do you fall on one side or the other of that?

6 JUROR DAVIS, JR.: I'm non-union.

7 MR. HILL: All right.

8 JUROR DAVIS, JR.: I'm the executive side of it.

9 All the production guys are union --

10 MR. HILL: All right.

11 JUROR DAVIS, JR.: -- yeah.

12 MR. HILL: All right.

13 JUROR DAVIS, JR.: The guys that make our products.

14 MR. HILL: Folks -- I appreciate that, Mr. Davis.

15 Folks, I'll ask you one last question. You're  
16 sitting out there. Lawyers are asking you questions. He's  
17 trying to find out if you're the right people to hear this  
18 case and give these people a fair shake.

19 Is anything on your mind that I didn't ask about;  
20 but you, if you were in my shoes, would want to know to seat  
21 a fair jury? Would you tell me about that? Anybody?

22 All right. I appreciate y'all's time. We look  
23 forward to the chance to present our case to the eight of you  
24 that are selected. And, again, we recognize the hardship  
25 we've imposed by asking you to be here, and we're very

1 grateful and appreciative of the fact that you answered the  
2 call, answered your civic duty, and showed up for jury  
3 selection today.

4 Thank you.

5 MR. HILL: Thank you, Your Honor.

6 THE COURT: Thank you, Mr. Hill.

7 Mr. Findlay, would you like a time warning? I'll  
8 try to get it right.

9 MR. FINDLAY: Yes, please, Your Honor.

10 THE COURT: Five minutes?

11 MR. FINDLAY: Yes, ma'am.

12 THE COURT: Okay.

13 MR. FINDLAY: Thank you very much.

14 Good morning again, Ladies and Gentlemen. And I  
15 thank you a lot for your patience and your responsiveness to  
16 Mr. Hill. I know it's been a long morning already.

17 The Court has given me another 45 minutes. I'll  
18 try not to use all of it, but I can't promise that I won't.

19 Let me start out by introducing myself to you and  
20 telling you a little bit about myself, like y'all did with  
21 us.

22 I work and live here in Tyler. As Mr. Hill said,  
23 I've got a small law firm called Findlay & Craft. We office  
24 right in the People's Petroleum Building that the  
25 Brookshire's Family has been renovating.

1           My wife has put up with me for 25 years now, and  
2 we've got two boys. One is a sophomore at Baylor, and one is  
3 a sophomore here in high school in Tyler.

4           So we thank you again very much for being here.

5           That's a little bit about me. Let me tell you a  
6 little bit about what I was thinking about when Mr. Hill was  
7 making a few of his introductory comments, and then I'll get  
8 into my questioning.

9           Mr. Hill is a friend of mine, actually. He and I  
10 live in the same neighborhood. A week or so ago, I was  
11 running through the rain on Sunday and a car pulled up to me,  
12 and it was Mr. Hill offering to give me a ride back home.

13           So on a personal front, he's a great guy.

14           Professionally, in this case, I couldn't disagree  
15 with Mr. Hill more if I tried.

16           He said something to you, and so -- and it probably  
17 won't surprise you that he said something to you, and I wrote  
18 it down. Apple is using the '820 patent. And I thought that  
19 Mr. Hill almost got it right, but he forgot the word "not."  
20 Apple is not using the '820 patent.

21           You'll hear the evidence in this case. You'll see  
22 the witnesses presented to you. And while, as Mr. Hill  
23 admitted, they have that burden, I think you'll see us prove  
24 that to you convincingly, that we are not using that patent.

25           And because of that, when Mr. Hill spoke about

1 damages and lots of money, that doesn't come into play,  
2 Ladies and Gentlemen. Because if there's no infringement,  
3 there's what? Anybody finish that statement for me?

4 JURORS: No money.

5 MR. FINDLAY: No money. Thank you very much.  
6 Exactly right.

7 Now, let me go down and make sure there's no one  
8 else that knows anybody else in Mr. Hill's law firm. It's in  
9 Longview, as I think Mr. Drew, you probably know. He has an  
10 office here in Tyler as well.

11 One of his partners, I think Mr. Drew mentioned, is  
12 Mr. Bruce Smith. Anybody recognize that name from Longview?

13 Mr. Drew, obviously.

14 And Juror No. 4, Ms. Stoddard, how do you know  
15 Mr. Smith?

16 JUROR STODDARD: He is the ex-husband of a lady I  
17 used to be friends with years ago. I haven't seen her in  
18 probably 10, 15 years.

19 MR. FINDLAY: Okay. So that --

20 JUROR STODDARD: But I do know the name.

21 MR. FINDLAY: Sounds like it would have no  
22 influence either way on your --

23 JUROR STODDARD: Absolutely not.

24 MR. FINDLAY: Okay. Thank you, ma'am.

25 Did anybody else, other than Mr. Drew, know



1 Mr. Smith?

2 There's a gentleman, Johnny Ward; and his father is  
3 also in the firm, Mr. T. John Ward.

4 Nobody?

5 And Claire Henry. And I think, Mr. Faulkner, you  
6 mentioned Claire Henry. How do you know Ms. Henry?

7 JUROR FAULKNER: Just a family friend.

8 MR. FINDLAY: Okay. Been to their house, they've  
9 been to your house, that sort of thing or --

10 JUROR FAULKNER: Had dinner with her two weeks ago  
11 and was at her grandmother's funeral a month ago, so...

12 MR. FINDLAY: And I think Mr. Hill asked you these  
13 questions, but does that give you any pause in being able to  
14 render a complete, fair, down-the-middle verdict?

15 JUROR FAULKNER: No.

16 MR. FINDLAY: Okay. Thank you, sir, very much.

17 Mr. Hill also introduced on his team Caldwell  
18 Cassady & Curry. They've got offices, I think, in Dallas and  
19 Austin. Let me list some of the names. I don't think it  
20 would be likely that y'all know them, but we want to just  
21 make sure there's no connection there.

22 Bradley Caldwell, Jason Cassady, Austin Curry,  
23 Chris Stewart -- I'm not sure where Chris is -- but Jason  
24 McManis. Ring a bell?

25 There's also a firm representing CCE called the

1 Bumgardner firm, a gentleman named Ed Bumgardner and Don  
2 Puckett.

3 I didn't think so, but thank you, Ladies and  
4 Gentlemen, for bearing with me on that.

5 There are a number of teachers in the audience or  
6 former teachers, and they might know the answer to this  
7 question, but the Seventh Amendment to the Constitution is  
8 what gives us the right to be here in jury selection. I  
9 suspect some of the teachers did know that.

10 The Seventh Amendment gives American citizens the  
11 right to have these decisions decided by a jury. We're the  
12 only country in the world that has that right.

13 Apple believes in that, and we're glad that you're  
14 here. We think that right and the -- we think that  
15 participation in the jury system is second really only to  
16 military service.

17 And I know there are some veterans here. I think  
18 Mr. Burney, retired Navy. We thank you all for your service.

19 And doing this is, I would suggest, just one step  
20 below that. The justice system breaks down without you  
21 folks. So we really do appreciate it.

22 This case is about Apple. And Mr. Hill talked to  
23 you about Apple. I would like to just have a volunteer, if I  
24 could.

25 When you first heard the case was about Apple, that

1 that was the Defendant, what did you think? Anybody have any  
2 initial thoughts you would be willing to share with us? Did  
3 you think, oh, that sounds exciting; that sounds boring?

4 Anything you're willing to share?

5 Yes. Okay. Well, Juror No. 1, Mr. Kinsman. Thank  
6 you.

7 JUROR KINSMAN: I just heard Apple, and you just  
8 think, okay, it's a big company. It's got a lot of different  
9 products. I know within my classroom this year, you know,  
10 schools are going technology, and you can see around the  
11 courtroom and up there on the juror stands that technology is  
12 a big implementation of our world.

13 And so I just thought, you know, it's a big  
14 company, that they have got a lot of varying products.

15 MR. FINDLAY: Are you using technology even in the  
16 third grade level?

17 JUROR KINSMAN: Yes, sir, we are. We have Apple  
18 one-to-one iPads to each student this year. So --

19 MR. FINDLAY: Wow.

20 JUROR KINSMAN: -- that's really something that's  
21 interesting, and I look forward to using. It's the future.  
22 Technology is what we use to drive a lot of different  
23 mechanics and different things.

24 MR. FINDLAY: Can you give us just a real quick  
25 idea of what you use those -- with them being in third grade,

1 how do you use those?

2 JUROR KINSMAN: Third grade -- it's only the third  
3 week of school, so having them I've used them for different  
4 things. You can do online assessments. It gives back data  
5 feedback, instant things that, you know, you can use about  
6 your students.

7 So it's just a quick way of assessing. You can use  
8 it for informal assessments and different things like that.  
9 So we use them a lot. We don't use them -- they're not our  
10 main mechanic, you know, but it is an implementation of our  
11 day, and we use it here and there, so...

12 MR. FINDLAY: Thank you very much --

13 JUROR KINSMAN: Yes, sir.

14 MR. FINDLAY: -- for sharing that with us.

15 Mr. Gill, I think you raised your hand.

16 JUROR GILL: Just very briefly. I've been involved  
17 in computer technology since 1973 when I enlisted in the Air  
18 Force, and I've been interested in technology. And it's  
19 been -- well, that's kind of like, you know, what I teach  
20 now.

21 And so, intellectually, I thought, oh, this would,  
22 you know, be very interesting to be involved in this aspect  
23 of the technology industry.

24 MR. FINDLAY: If you're selected to the jury, I do  
25 think you will find it interesting. I don't think it will be

1 a boring case for you.

2 Thank you very much, Mr. Gill.

3 Is anybody else willing to share with us what  
4 initial thought you may have had when you heard about Apple?

5 We've got two folks. Let me take No. 17,  
6 Ms. Stockman.

7 JUROR STOCKMAN: My name is Valarie Nicole  
8 Stockman, and I think it would be very interesting to do, to  
9 sit on the jury. I sat on one jury before, and it was just  
10 as interesting but not as big of a case nearly. It was  
11 through Seven Points, but I found it very interesting.

12 MR. FINDLAY: Thank you very much.

13 And in the front, Ms. Stoddard?

14 JUROR STODDARD: I just wondered why it was being  
15 heard here in Tyler.

16 MR. FINDLAY: Okay.

17 JUROR STODDARD: Two big companies --

18 MR. FINDLAY: Okay.

19 JUROR STODDARD: -- little town.

20

21 MR. FINDLAY: Okay. Well, because you've got one  
22 of the best Judges around. That's why it's being heard here  
23 in Tyler. That would be my answer to you.

24 Thank you all very much.

25 Now, let me ask an uncomfortable question, for

1 someone representing Apple. A lot of you have Apple  
2 products. Have any of you ever gotten to the point where you  
3 just were saying a whole bunch of words you shouldn't say  
4 about the product, wanted to throw it down, throw it out the  
5 window, grab a hammer, and smash it? Anybody ever had those  
6 sorts of really frustrating experiences with any of their  
7 Apple products?

8 Okay. Let's start -- remember your hand. Let me  
9 start with Mr. Faulkner real quickly.

10 What can you share with us?

11 JUROR FAULKNER: Well, I usually just find somebody  
12 that's 20 or 30 years younger, and they can solve the  
13 problem. It's just, you know, when you're in your 60s, that  
14 technology and things change. It's just hard to stay up with  
15 it. I always find someone younger, and they seem to correct  
16 it without a problem.

17 MR. FINDLAY: I have the same thing with my  
18 14-year-old, so -- but it doesn't -- it didn't somehow taint  
19 your view of the company Apple?

20 JUROR FAULKNER: No.

21 MR. FINDLAY: All right. Thank you.

22 JUROR FAULKNER: It's usually my fault.

23 MR. FINDLAY: Thank you, sir.

24 Ms. Stoddard?

25 JUROR STODDARD: Just very similar to what he said,

1 just using the devices. But half the time it turns out it  
2 was AT&T.

3 MR. FINDLAY: Okay.

4 JUROR STODDARD: So -- and then like he said, I  
5 just find a kid to walk me through it.

6 MR. FINDLAY: Thank you.

7 Anybody else have some Apple products and at times  
8 you've just been madder than heck or all frustrated with it?

9 Let me ask you this: Has anyone ever had the  
10 opportunity to -- to call an Apple -- AppleCare or to call  
11 the Apple folks or go to one of the stores and try to get  
12 help or assistance with a problem?

13 We'll start with the front row and work back.

14 Again, Mr. Faulkner, can you tell us about that?

15 JUROR FAULKNER: I was in Austin, I guess, about  
16 three months ago, and I had an issue with my phone and took  
17 it in. And again, it was something that I'd messed up so --

18 MR. FINDLAY: Did you take it in to like --

19 JUROR FAULKNER: It was an Apple store in Austin.

20 MR. FINDLAY: An Apple store. All right. And how  
21 did they treat you?

22 JUROR FAULKNER: Fine.

23 MR. FINDLAY: Fix the problem? Did they fix the  
24 problem?

25 JUROR FAULKNER: They fixed the problem.

1 MR. FINDLAY: Great. Thank you.

2 I think there was someone in the second row?

3 Yes, Mr. Drew?

4 JUROR DREW: Steve Drew. I've been to multiple  
5 Apple stores with my MAC, just various issues. They've  
6 always treated me real well.

7 MR. FINDLAY: Good. Thank you very much.

8 Is there anybody else on the second row?

9 Third row?

10 And at the back, Mr. Gill, is that -- did you just  
11 raise your hand?

12 JUROR GILL: Yes.

13 MR. FINDLAY: Yes, sir?

14 JUROR GILL: I can remember a couple of times when  
15 I called the customer assistance with, you know, a couple of  
16 different issues, and they were always resolved to my  
17 satisfaction.

18 MR. FINDLAY: Worked out well?

19 JUROR GILL: Yeah.

20 MR. FINDLAY: All right. Thank you, sir.

21 Mr. Drew, let me jump out of line a little bit.

22 Could we go back to you?

23 As you might -- would it -- would it surprise you

24 to know that it causes me a little bit of concern if

25 you're -- you've got a legal case that's -- that you're being



1 represented by Mr. Hill's firm with?

2 JUROR DREW: Yes, I can understand that.

3 MR. FINDLAY: Okay. Thank you. So I don't want  
4 you to take these questions the wrong way.

5 Now, could you hand back the microphone to  
6 Ms. Mayes. Thank you.

7 And I know you said that Mr. Hill isn't the lawyer  
8 working on it. Did you say it was Mr. Smith?

9 JUROR DREW: Mr. Smith and Mr. Miller.

10 MR. FINDLAY: Okay. Do you think in any way,  
11 though, that that somehow is going to make you, perhaps, more  
12 likely to -- to believe something that you hear, perhaps,  
13 from Mr. Hill or their side than -- than our side, just  
14 because of that relationship, because you've -- you've  
15 entrusted them with something pretty -- pretty important?

16 JUROR DREW: No, sir, I don't believe it would.  
17 But it's an inconvenience because I am scheduled to appear at  
18 a hearing next Tuesday. That's the reason I would like to be  
19 excused.

20 MR. FINDLAY: Okay. So, your concern is that?

21 JUROR DREW: Not as far as my ability to make an  
22 unbiased decision.

23 MR. FINDLAY: Okay. Thank you, Mr. Drew. I  
24 appreciate that.

25 I believe -- I think it was Ms. Stockman who

1 indicated that she was somewhat excited that this case was  
2 about Apple or something. And you mentioned, I think,  
3 Ms. Stockman, it's not -- the other case you were on wasn't  
4 as big of a case.

5 But let me talk -- bring that back to something  
6 else that Mr. Hill asked about, big corporations. I think we  
7 can all agree, as some of you said, that Apple is a big  
8 company.

9 Do you have any strong feelings,  
10 Ms. Stoddard [sic], about big companies in general?

11 JUROR STOCKMAN: Not in general. My mother used to  
12 work for IBM so I have no feelings one way or another.

13 MR. FINDLAY: Okay. Thank you.

14 Let me ask for a show of hands, anybody else have  
15 strong feelings -- and let's just start off first one way or  
16 the other -- about large corporations, passionate about them  
17 for whatever the reason is?

18 Let me ask you this, it may be a little bit  
19 different way: Does anybody believe that a corporation in a  
20 lawsuit like this should be held to a higher standard than  
21 the individual should? That somehow there should be more  
22 burden on us to show that we didn't do anything wrong, that  
23 we didn't infringe? Anybody have that sense just because a  
24 corporation is big it should have that more -- that higher  
25 responsibility?

1 I see no show of hands. Thank you.

2 Let me ask another one. And -- because there are  
3 some people that have very strong feelings about big  
4 corporations. Sometimes there's anti-corporate views. And,  
5 although I know some of you expressed just the opposite, does  
6 anybody here think that a big corporation will steal or cheat  
7 if they can get away with it? Anybody ever had that  
8 sentiment, that a big corporation is going to cheat and steal  
9 if they can get away with it?

10 JUROR BURNEY: May I ask for clarification?

11 MR. FINDLAY: Of course.

12 JUROR BURNEY: Do you mean just because they're a  
13 big company versus a small company?

14 MR. FINDLAY: Yes, Mr. Burney, just because it's a  
15 big -- that big companies are likely to cheat and steal if  
16 they can get away with it.

17 JUROR BURNEY: No. I don't believe that any more  
18 than for a small company.

19 MR. FINDLAY: I agree.

20 JUROR BURNEY: If they're going to cheat and steal,  
21 they're going to cheat and steal.

22 MR. FINDLAY: Thank you very much.

23 Somebody else on the first row raised their hand?

24 Okay. Thank you.

25 Anybody think that the responsibility or -- or

1     accountability, if you will -- that responsibility or  
2     accountability increases with the size of the company? That  
3     somehow if you're a larger company you should be more  
4     accountable than a smaller company should?

5             Okay. Thank you.

6             We are -- we're here in Federal Court. This is a  
7     pretty formal place. Some of you have indicated, you know,  
8     you felt excited when you first heard it was Apple, that it  
9     was going to be an interesting and big case.

10            Who thinks that the fact that this case has gotten  
11    all of the way here to Federal Court, it's been pending for  
12    about two years, means that Apple must have done something,  
13    there must be something to the story that Mr. Hill was  
14    suggesting was going to be their story? Anybody feel that  
15    way at all?

16            Juror No. 3, Mr. Jennings. Could you share that?

17            JUROR JENNINGS: I just feel like CCE, they  
18    wouldn't pursue it if they didn't feel they had a case also,  
19    you know. So I want to see both sides.

20            MR. FINDLAY: So let me ask you this, though: Does  
21    that -- since we made it -- and I appreciate you sharing  
22    those feelings with us. Since we've made it all this way to  
23    the courthouse, we're sitting here picking a jury, does that  
24    mean that in your mind CCE starts a little bit ahead? And  
25    you figure, well, there's got to be something to the story

1 if -- if we're even here?

2 JUROR JENNINGS: I believe they believe there is a  
3 case, and they are pursuing it the way they should, and  
4 that's what we're here for.

5 MR. FINDLAY: Okay.

6 JUROR JENNINGS: I don't know if that answers your  
7 question or --

8 MR. FINDLAY: Well, do you think you would -- do  
9 you think that means they start a little bit ahead? That  
10 if -- if you put us on like the starting blocks --

11 JUROR JENNINGS: No.

12 MR. FINDLAY: -- of a race at the Olympics they get  
13 a headstart over our side?

14 JUROR JENNINGS: No.

15 MR. FINDLAY: All right. Thank you, Mr. Jennings.

16 Anybody else feel that way?

17 Yes, Ms. Youngblood. Do you feel that -- share  
18 that with us. You feel that somehow the fact that we're all  
19 the way here in Federal Court, we've gotten this far in this  
20 case, we're picking a jury, means that Apple just must have  
21 done something wrong?

22 JUROR YOUNGBLOOD: Yes, I do.

23 MR. FINDLAY: Okay.

24 JUROR YOUNGBLOOD: I believe -- I mean, why would  
25 they be here if they did not believe that Apple did

1 something? That doesn't mean Apple did. It just means that  
2 they believe that they did.

3 MR. FINDLAY: Right. And I guess then that's a  
4 good point. My question is a little bit different, though.

5 Does that put in your mind, as you sit here and  
6 listen to Mr. Hill talk to you and you listen to me ask you  
7 questions, does that put in your mind that CCE starts a  
8 little bit ahead of Apple in this case because you think,  
9 well, gosh darn, we've made it all the way here, there's got  
10 to be something to CCE's case?

11 Do you understand what I'm trying to ask?

12 JUROR YOUNGBLOOD: Yeah, I understand. I'm trying  
13 to think.

14 MR. FINDLAY: Certainly.

15 JUROR YOUNGBLOOD: And, you know, it's hard.

16 MR. FINDLAY: I'm sorry.

17 JUROR YOUNGBLOOD: This case has been going on for  
18 three years?

19 MR. FINDLAY: About two.

20 JUROR YOUNGBLOOD: Well, it -- have we ever been  
21 here before on this case?

22 MR. FINDLAY: No, ma'am.

23 JUROR YOUNGBLOOD: Okay. Because it seems like I'm  
24 having deja vu here. I don't know. I don't know whether it  
25 makes me think that they are a little bit -- no, I'm not

1 senile. Don't write that down, please.

2 MR. FINDLAY: I was just putting a checkmark. I  
3 promise.

4 JUROR YOUNGBLOOD: I saw you over there.

5 MR. FINDLAY: I'm sorry. I'll keep my hands back  
6 here.

7 JUROR YOUNGBLOOD: It seems like -- I believe that  
8 they must have a case or they wouldn't be here. But I  
9 believe that if Apple really believed that they were wrong,  
10 they would have paid them off.

11 MR. FINDLAY: Okay. That's fair. That's fair.  
12 Thank you very much.

13 Let me ask you this, change the subject a little  
14 bit: Who likes to watch some of those shows, CSI, Law &  
15 Order, those type of shows? Let me see a big -- let me get a  
16 big hand so I can -- we can write this down.

17 No. 7, No. 5, No. 4, No. 9, No. 10, No. 11, 13, 14,  
18 Ms. Youngblood, which is No. --

19 JUROR YOUNGBLOOD: 21.

20 MR. FINDLAY: 21. No. 20.

21 Looks like we've got a bunch. No. 19, Nos. 17 and  
22 16.

23 And I think -- did I get everybody?

24 Okay. Who wants to give me a -- volunteer, raise  
25 your hand, tell me why you like watching those shows.

1           Okay. Ms. Stoddard, why do you enjoy watching  
2 those kind of shows?

3           JUROR STODDARD: I just finished a marathon of  
4 Suits. It's just fun. I mean, what else is there to watch  
5 on TV? They're smart people. They're, you know, figuring  
6 things out. It's just -- I think it satisfies a lot of  
7 curiosity to watch people figure it out.

8           MR. FINDLAY: Okay. Thank you.

9           Somebody else who was brave enough to raise their  
10 hand, tell me why you like to watch those shows.

11           No. 16, Ms. Wade, you haven't said too much. We're  
12 going to pick on you a little bit. Thank you. Why do you  
13 enjoy those shows?

14           JUROR WADE: Evidence.

15           MR. FINDLAY: Evidence.

16           JUROR WADE: Yes.

17           MR. FINDLAY: We love evidence. We're lawyers.  
18 Tell us what you mean.

19           JUROR WADE: Evidence makes the case. I mean, you  
20 have to have all the right evidence.

21           MR. FINDLAY: Okay. Ms. Youngblood, I'm going  
22 to -- I'm going to write that one down. That's a good one.  
23 Thank you. Evidence makes the case. Ms. Wade, I couldn't  
24 agree with you more.

25           Let me ask you this: Is one reason why some of you



1     enjoy those shows is because when it starts and you're first  
2     watching it, the first ten minutes you think, ah, I think I  
3     know what happened? And then by the time the show ends it's  
4     entirely different; that what you thought was the case, isn't  
5     the case? Can we all get a show of hands? That's -- that's  
6     kind of what is enjoyable about those shows, right?

7             Well, you probably see where I'm going with this.  
8     In this format in this trial, Mr. Hill and his folks are  
9     always going to get to go first before Apple. And then Apple  
10    gets to stand up and give its response. That's why I'm using  
11    that as an example to suggest to you why it's so important  
12    that you keep an open mind all the way through the process in  
13    this case.

14            Because until the end, until you've heard  
15    everything, you don't know exactly what the facts are.  
16    And as Ms. Wade said, the evidence will make the case. So  
17    thank you very much for that.

18            Let me ask you this: Has anybody ever been wrongly  
19    accused of taking something or doing something that they  
20    didn't do? Somebody's been wrongly -- you've been wrongly  
21    accused of taking somebody's idea, you've been wrongly  
22    accused of taking somebody's property? Anybody willing to  
23    share any event that's happened like that?

24            No? Thank you.

25            Let me put a hypothetical in there. If -- if you

1 were accused of taking something that you didn't take or  
2 using something that you didn't use, you could do two things.  
3 Somebody might just try to say, okay, admit it, and go away  
4 because that was the easier part. Or you could stand on  
5 principle, and you could fight and fight hard to try to  
6 vindicate yourself.

7 We would submit to you that's what the evidence is  
8 going to show that Apple is doing in this case.

9 Will everybody agree with me that anybody who is  
10 accused of doing something in a court of law has got an  
11 absolute right to fight hard to vindicate themselves if they  
12 believe they did nothing wrong? Can I get a show of hands  
13 that everybody agrees with that?

14 Thank you.

15 We think that's what this case is about, Ladies and  
16 Gentlemen. And you'll -- you'll see that as we -- as we move  
17 through.

18 Let me ask you another question. Can everybody  
19 agree with the statement that it's wrong to not give credit  
20 where credit is due? That it's wrong to not give somebody  
21 credit if they have worked on something, and they should be  
22 entitled to credit?

23 Anybody ever been involved in a team effort at  
24 work? A work project that you worked with a bunch of  
25 colleagues on?

1           Let's take -- take a couple folks. Let's start  
2 with Mr. Burney. Can you tell us about that?

3           JUROR BURNEY: Well, all through my military  
4 career, everything is a team effort. I mean, you don't run a  
5 ship without a team, you know. Working various jobs through  
6 the years and businesses, everything has to be a team.

7           MR. FINDLAY: Can you think of a particular project  
8 in the military that stands out where you had a team of -- of  
9 men that were trying to accomplish something?

10          JUROR BURNEY: Sure.

11          MR. FINDLAY: Share that with us, if you would,  
12 please.

13          JUROR BURNEY: I was in the -- I was in the medical  
14 side and we used to have to do accreditation for the  
15 hospitals. And so you put a team together to work towards  
16 that accreditation.

17                You know, you check all the paperwork and this one  
18 would do that and on and on and on.

19                Same thing when I was at the college. We have  
20 accreditation that you've got to go through. One guy does IT  
21 stuff. One -- the dean of students does other things. And I  
22 did the business, the finance and business side. You know,  
23 so long hours and it's a team.

24          MR. FINDLAY: And at some point with those team  
25 efforts, would -- would at some point during the process you

1 would have to report to somebody or a supervisor --

2 JUROR BURNEY: Sure.

3 MR. FINDLAY: -- would have to come to look and see  
4 what you did?

5 JUROR BURNEY: Sure.

6 MR. FINDLAY: And how -- how y'all performed?

7 JUROR BURNEY: Sure. You have inspecting teams  
8 that come in and do that.

9 MR. FINDLAY: Would it -- would it make you mad if  
10 somebody in the team took credit for all the teamwork?

11 JUROR BURNEY: Sure. You've always got somebody  
12 who's not carrying a full load, and somebody else has got to  
13 pick up the slack or the whole team dies. I mean, the whole  
14 organization doesn't do well so...

15 MR. FINDLAY: And would you agree with me that it's  
16 wrong for one member of the team to try to claim that all of  
17 the success was because of him?

18 JUROR BURNEY: Yes.

19 MR. FINDLAY: As opposed to the team effort?

20 JUROR BURNEY: Yes.

21 MR. FINDLAY: You've heard that statement, there's  
22 no "I" in team?

23 JUROR BURNEY: That's right.

24 MR. FINDLAY: All right. Thank you very much.  
25 Somebody else had their hand raised.

1 Yes, Mr. Kinsman?

2 JUROR KINSMAN: Being a teacher we have a third  
3 grade team that I'm very proud of that I work with all of the  
4 time that, you know, our goal is the betterment of children  
5 and what they are learning socially and emotionally. So --  
6 and we work on lesson plans and things like that.

7 So our ideas are, to me, to be shared and to be  
8 given without, I guess, full credit in a sense. It's -- it's  
9 for the betterment of the students, so therefore, if someone  
10 else uses it within their classroom, I'm not looking for, you  
11 know, that teacher to stand there and say that, oh, this idea  
12 came from so-and-so.

13 So it's a little bit different from this  
14 gentleman's example, I guess, in the sense that we work  
15 together; but it's for the -- you know, it's for students.

16 So it's not necessarily, this is mine. You know,  
17 you want to kind of get some of that credit occasionally  
18 like, you know, that was a good idea, I guess, but...

19 MR. FINDLAY: Is it -- is it more a sense of the  
20 credit should go to the group, not the individual?

21 JUROR KINSMAN: I'm under the impression that, yes,  
22 if that's what it calls for. It's just for that -- you know,  
23 it's -- you occasionally get those teachers that, you know,  
24 that don't pull their workload or they -- they don't want to  
25 share their ideas. But it's -- to me, you know, it's to

1 share. It's to give out those ideas. So if it calls for  
2 that, yes.

3 But, I mean, this case is different. It's two  
4 companies. It's, you know, it's a different kind of ball  
5 game.

6 MR. FINDLAY: Thank you, Mr. Kinsman.

7 JUROR KINSMAN: Yes, sir.

8 MR. FINDLAY: I asked the question simply because  
9 if you're sitting on the -- on the jury, the eight of you  
10 that get there, there is relevance of the question and you'll  
11 understand it at that time. We can't go into it at this  
12 point, but thank you very much.

13 Does anybody else want to volunteer of a team  
14 effort they have been involved in that they're particularly  
15 proud of?

16 No one? Thank you.

17 Now, Mr. Hill talked about damages a little bit in  
18 the case. And when I first started out I mentioned to you  
19 that we think we don't infringe. We believe we will prove we  
20 don't infringe. And, therefore, the damages is zero.

21 But under the way these cases work, and under the  
22 law, we will present a witness who will talk about damages.  
23 And the purpose of that will be he will look at what the  
24 Plaintiff is claiming, what CCE is claiming in terms of  
25 damages. And we'll explain why we think that's just too

1 high. It shouldn't be anything close to that. And if a jury  
2 were going to award a number, it should be something much  
3 lower.

4 Now, when I -- I've been fortunate enough and  
5 blessed to do this kind of work for a while now. I've tried  
6 a lot of these cases. And sometimes they don't come out the  
7 way you want and sometimes you lose. And sometimes you're  
8 able to talk to the jurors after it happens, which is always  
9 a great opportunity for the lawyer.

10 And I've heard from a number of jurors in those  
11 situations where it didn't go as I wanted it to, and they  
12 will say something along the lines of: Mr. Findlay, you  
13 know, I heard you and I kind of believed you when you said  
14 y'all didn't infringe, and you had some good evidence on it;  
15 but then when you started talking about damages, I thought,  
16 well, that's kind of hypocritical, that why would you be  
17 talking about damages if you don't infringe? That seem to be  
18 contradictory.

19 Anybody have that kind of a sense that it might  
20 puzzle you as to why we might talk about damages on our side  
21 when we're forcefully telling you we don't infringe?

22 Mr. Jennings, I saw you nodding your head a little  
23 bit. What do you think about that?

24 JUROR JENNINGS: Well, you have to plan ahead, I'm  
25 assuming, you know, you want to know if you are found

1 accountable, you don't want it to be the full amount.

2 MR. FINDLAY: Correct.

3 JUROR JENNINGS: I could see that being  
4 hypocritical, though, and that's kind of...

5 MR. FINDLAY: Let me -- let me give you an example.  
6 Have you ever been involved in a -- in a car wreck?

7 JUROR JENNINGS: No.

8 MR. FINDLAY: Okay. Let's -- let's pretend. Play  
9 hypothetical. Let's say you're involved in a car wreck and  
10 you're convinced in your heart of hearts that you were not at  
11 fault for that accident. Your light was green.

12 But the other guy sues you. He says just the  
13 opposite, that, you know, Mr. Jennings, you were at fault in  
14 this accident.

15 And this is just a hypothetical, so we're playing.

16 And it goes to court. And you -- so you're  
17 going -- there's going to be a jury decide whether you're at  
18 fault or he's at fault.

19 But you also notice that the damages that he's  
20 claiming for his car are \$20,000; \$10,000 more than it should  
21 be. Even if you're not at fault and you believe that, do you  
22 think you might contest the damages number and say, look,  
23 that's crazy. He was driving an old ten-year-old pickup  
24 truck, not a Cadillac. The damages ought to be a lot less?

25 JUROR JENNINGS: Yes. And you would want it to be



1 fair even if you lost. You wouldn't want it to be  
2 unreasonable.

3 MR. FINDLAY: Okay. And would you hope in that  
4 situation that the jury didn't hold it against you that you  
5 were talking about damages? Do you follow what I mean,  
6 because you weren't at fault for the accident?

7 JUROR JENNINGS: Right.

8 MR. FINDLAY: Okay. Does everybody -- anybody have  
9 any thoughts on that, with what I was discussing with  
10 Mr. Jennings?

11 Does everyone agree with that, that just because we  
12 talk about damages in this case doesn't mean that we think we  
13 owe any damages?

14 I'm getting some nods or -- and shaking of the head  
15 so...

16 Let me pick on somebody, though.

17 Mr. Garland you've been kind of quiet today. What  
18 do you think about that? Do you agree that -- that just  
19 because we talk about damages shouldn't suggest that we're  
20 being inconsistent or -- or not -- or we're hypocritical?

21 JUROR GARLAND: No, sir. I think you're realizing  
22 that it could go either way. And should you lose, just  
23 because Apple is a company that everybody in the world has  
24 heard of --

25 MR. FINDLAY: Uh-huh.

1 JUROR GARLAND: -- they've got plenty of money, why  
2 this 28 million-dollar number -- I thought that is -- this a  
3 number we reached in the air or is that what is really owed.

4 MR. FINDLAY: Understood.

5 JUROR GARLAND: I have a problem going overboard,  
6 paying a lot of money for steal -- copying a laptop.

7 MR. FINDLAY: And that -- and that you -- you put  
8 it a good way because I think what -- the eight of you that  
9 sit here, when you hear our damages side of the case it will  
10 be kind of like what Mr. Garland said, it's overboard for  
11 what they are asking for. I just wanted to make sure that no  
12 one holds it against us just because we're talking about  
13 damages. Because as -- as I started this out -- I lost my  
14 page -- we are not using the '820 patent.

15 Thank you very much, Ladies and Gentlemen.

16 When you first -- let me ask you this: Did  
17 everyone see the patent video?

18 Did you enjoy that video? Find it was --  
19 learned -- learned -- I'm going to bet you learned a lot that  
20 you didn't know before seeing the video.

21 All right. Let me -- we'll do it this way. I'm  
22 going to pick on somebody.

23 Ms. Palmer, what was the first thing you thought of  
24 when you realized this was a patent case?

25 Let me ask, did you think about any particular

1 invention or any particular person?

2 JUROR PALMER: No.

3 MR. FINDLAY: Okay. Did you think it might be  
4 something interesting?

5 JUROR PALMER: I'm sorry?

6 MR. FINDLAY: Did you think it might be something  
7 interesting?

8 JUROR PALMER: No.

9 MR. FINDLAY: Okay. Fair enough. Thank you very  
10 much.

11 Did anybody have any thought when they heard of a  
12 patent -- Mr. Kinsman, go ahead.

13 JUROR KINSMAN: I thought of a Keurig. They came  
14 out with that patent, I think it was, for the K-Cups.

15 MR. FINDLAY: Yes, sir.

16 JUROR KINSMAN: And I think that patent must have  
17 expired, which I've learned I didn't know patents could  
18 expire for other companies to make things, so that, you know,  
19 that's why we see like the Hamilton Beach having the pods and  
20 things like that now.

21 So I think Keurig must have had a patent for that  
22 that expired. So I thought that was kind of an  
23 interesting -- the video itself was, you know, a presenter  
24 presenting, but it was -- it was interesting.

25 MR. FINDLAY: Good. Let me ask you: Did it --

1 did -- did you, or if anybody else did raise your hand, when  
2 you first heard of the -- heard this was a patent case, did  
3 you think of, well, it's got to be something incredible,  
4 like -- like Edison and his light bulb or like -- like Henry  
5 Ford and the Model T car?

6 JUROR KINSMAN: I seemed to think it was -- yeah.  
7 I thought it was maybe something tangible. This seems  
8 intangible. Or it's something that's technology based. I'm  
9 not sure if like the patent itself is tangible or not. Is it  
10 something that we use, yes. But I thought of, you know, I  
11 thought something tangible, something you would hold,  
12 something you -- you can put in your hand.

13 MR. FINDLAY: All right. Thank you.

14 How about -- let me pick on somebody else.

15 Mr. Thomas, what did you first think when you heard  
16 this was a patent case? Did you think about anything --

17 JUROR THOMAS: Big headaches.

18 MR. FINDLAY: A big headache?

19 JUROR THOMAS: Yeah. I've had family members try  
20 to do patents, and they -- they draw out for years. And so  
21 to me it's a headache. And that's my -- that's my thoughts  
22 on it.

23 MR. FINDLAY: Who -- tell us about that. Who in  
24 your family has tried to get a patent?

25 JUROR THOMAS: I've had -- well, I guess it was

1 family. He tried to invent something and somebody already  
2 prior to that had the same idea but it wasn't made the same  
3 way.

4 MR. FINDLAY: Uh-huh.

5 JUROR THOMAS: But in the long-run it had the same  
6 function. So in the long-run it was the same, so he just  
7 draw -- it was drawn-out and drawn-out and drawn-out.

8 MR. FINDLAY: So did he -- did your family member  
9 get the patent or --

10 JUROR THOMAS: No, he did not. He didn't. They --  
11 they said it was too close engineering.

12 MR. FINDLAY: To what had come before?

13 JUROR THOMAS: Uh-huh, yes.

14 MR. FINDLAY: So, he wasn't -- and I'm sorry for  
15 him. But he wasn't given the patent because the Patent  
16 Office decided that somebody had kind of --

17 JUROR THOMAS: Somebody already had the same -- the  
18 same idea, pretty much.

19 MR. FINDLAY: Same idea before him?

20 JUROR THOMAS: Right.

21 MR. FINDLAY: But you understand that that's kind  
22 of a principle in patent law, that --

23 JUROR THOMAS: Yeah. I mean, I just -- I just  
24 believe that, you know, if someone has done it, you need to  
25 present the full patent, like the full engineer, not hold

1 anything back. You know what I'm saying?

2 MR. FINDLAY: Yes, sir.

3 JUROR THOMAS: So I guess with my family member,  
4 he -- he tried to do the full engineering, and then the other  
5 guy just only did half. So, I mean, that's what I know.

6 MR. FINDLAY: Does that experience at all make you  
7 lean one way or the other if you're selected on this case?

8 JUROR THOMAS: Not really. I just believe in  
9 presenting everything in front, you know, in full and not  
10 hold anything back.

11 MR. FINDLAY: Making a full disclosure?

12 JUROR THOMAS: A full disclosure, yeah. If you  
13 have anything to hide, you know, there's something wrong.

14 MR. FINDLAY: Understood. Thank you, sir.

15 Anybody else had a particular thought of a  
16 particular invention or inventor when you heard about that  
17 this was a patent case?

18 Does -- did you see the part in the -- in the  
19 patent video -- and I think I wrote it down -- where the  
20 gentleman talked about the fact that sometimes the Patent and  
21 Trademark Office can make mistakes? Does everybody agree  
22 with that from -- that the video did a good job of explaining  
23 that? He said no -- I think he said no process is perfect;  
24 that sometimes mistakes can happen.

25 Is there anybody that thinks, despite what I heard

1 in the video, if the Patent Office granted a patent and did  
2 this with the '820 patent, that despite -- since they --  
3 since the Government did that, since the PTO did that, I  
4 would never have the ability to find the patent invalid,  
5 despite the evidence? Does anybody feel that way, that they  
6 just couldn't find it invalid since the Patent Office has  
7 already blessed it?

8 Good. Thank you.

9 Has anybody before today heard of LTE in the  
10 context of cell phones?

11 I see a show of hands. Okay. No. 4, No. 3,  
12 Mr. Drew. I know there are some others on the back row.  
13 Let me pick on somebody.

14 Ms. Wade, I think you had your hand raised.

15 JUROR WADE: Uh-huh.

16 MR. FINDLAY: What have you heard about LTE? Or  
17 just seeing it on your phone?

18 JUROR WADE: I've just seen it on my phone.

19 MR. FINDLAY: Okay. Thank you, Ms. Wade.

20 Anybody else know anything more about LTE than just  
21 seeing it on their phone?

22 Mr. Gill?

23 JUROR GILL: As I -- as I understand it, it's  
24 essentially the current technology, the current cell phone  
25 systems used as far as the communications, establishing the

1 communication and the high-speed cellular networks that we  
2 currently experience. That's my understanding of it.

3 MR. FINDLAY: And do you have any work experience  
4 with that or just general understanding?

5 JUROR GILL: Just general understanding.

6 MR. FINDLAY: Okay. Thank you.

7 Anybody else have any particular -- yes,  
8 Mr. Jennings.

9 JUROR JENNINGS: I've installed some of the early  
10 OnStar modules and I think they were LGE. I can't remember  
11 exactly what technology was with them. It was back in the  
12 late '90s.

13 MR. FINDLAY: Yes, sir, installed them with your  
14 work at General Motors?

15 JUROR JENNINGS: Yeah, automobiles. Now we have  
16 WiFi in the cars.

17 MR. FINDLAY: Okay.

18 JUROR JENNINGS: That's my experience with it.

19 MR. FINDLAY: What -- do you -- there's a  
20 difference between LTE and WiFi, isn't there?

21 JUROR JENNINGS: Right.

22 MR. FINDLAY: Okay. What do you understand that  
23 difference to be?

24 JUROR JENNINGS: I'm not sure which one is in the  
25 car right now, honestly.



1 MR. FINDLAY: Okay.

2 JUROR JENNINGS: I can fix it when it's inop, but I  
3 can't tell you exactly what it's -- how it's getting into the  
4 car, who's streaming it.

5 MR. FINDLAY: All right. Thank you, sir.

6 Anybody else? Any understanding of LTE more than  
7 just seeing it on your phone or something?

8 Okay. Let me ask some general questions. Has  
9 anybody ever been a member of a union? If you would raise  
10 your hand.

11 There's a few folks. Keep your -- keep your --  
12 can I see your hands again? Thank you. I'm sorry.  
13 That's Mr. Garland, No. 6; Ms. Stoddard, No. 4;  
14 Mr. Washington.

15 JUROR WASHINGTON: 7.

16 MR. FINDLAY: No. 7. I'm sorry.

17 Mr. Thomas.

18 In the back row, is that Mr. Seale?

19 JUROR SEALE: Yes.

20 MR. FINDLAY: Thank you, sir.

21 I believe we've got everybody. Thank you.

22 Anybody ever been a supervisor in a union or a  
23 leadership role in the union?

24 Mr. Garland, can you tell us what that was?

25 JUROR GARLAND: Back when I was in the carpenter's

1 union, I was a carpenter's foreman, led a construction crew.  
2 That's pretty low tech.

3 MR. FINDLAY: And when was that?

4 JUROR GARLAND: Probably 30 years ago.

5 MR. FINDLAY: Okay.

6 JUROR GARLAND: No high-tech back then, so it was  
7 just a hammer and nails.

8 MR. FINDLAY: Okay. Thank you, sir.

9 I think Mr. Hill asked you-all had anybody been a  
10 defendant in a lawsuit. Let me ask the other side of that.

11 Has anyone, other than Mr. Drew -- I think we'll  
12 exclude you because I think you've told us about that,  
13 Mr. Drew -- anybody else ever had to been -- be a plaintiff  
14 in a lawsuit, to bring a lawsuit against somebody?

15 Mr. -- No. 4, Ms. Stoddard; Mr. Washington, No. 10,  
16 Mr. Staten, No. 6; Mr. Gill, No. 23.

17 Ms. Stoddard, can you tell us about that? If --  
18 and I don't -- and if this is something that which is  
19 uncomfortable, I don't mean to delve into it, we can talk  
20 about it in front of the Court.

21 JUROR STODDARD: It's a -- it's actually ongoing  
22 with a medical device.

23 MR. FINDLAY: Okay.

24 JUROR STODDARD: A company that manufactured.

25 MR. FINDLAY: Anything about that that makes you

1 lean one way or the other?

2 JUROR STODDARD: Not at all.

3 MR. FINDLAY: Okay. Thank you.

4 Mr. Staten, I think you had your hand raised.

5 JUROR STATEN: Yeah. We had a car wreck, my  
6 daughter and I. And we had to sue the company to get them to  
7 pay for what their driver did.

8 MR. FINDLAY: Okay. And did that get resolved to  
9 your satisfaction?

10 JUROR STATEN: Yes, it did. Yes.

11 MR. FINDLAY: Anything about that that makes you  
12 lean toward one side or the other?

13 JUROR STATEN: No.

14 MR. FINDLAY: All right. Thank you, sir.

15 Mr. Washington.

16 JUROR WASHINGTON: It was a car wreck.

17 MR. FINDLAY: Okay. Did it get resolved to your  
18 satisfaction?

19 JUROR WASHINGTON: Yes, yes.

20 MR. FINDLAY: And the same question. Anything  
21 about that makes you lean one way or the other in this case?

22 JUROR WASHINGTON: No.

23 MR. FINDLAY: Okay. Thank you, sir.

24 THE COURT: Five minutes, Mr. Findlay.

25 MR. FINDLAY: Thank you, Your Honor.

1 Mr. Gill, did you have your hand raised?

2 JUROR GILL: Actually twice.

3 MR. FINDLAY: Okay.

4 JUROR GILL: One was local here. We had our home  
5 built by a contractor here, and he did -- he left before the  
6 home was finished.

7 MR. FINDLAY: That's not good.

8 JUROR GILL: No, it wasn't good.

9 And -- no, it wasn't resolved to our satisfaction.  
10 Yes, we got a judgment but weren't able to really do anything  
11 as far as collecting.

12 MR. FINDLAY: And what was the other one you said?

13 JUROR GILL: The other was product liability or --  
14 a hip -- hip implant device that went bad. That one was  
15 resolved.

16 MR. FINDLAY: Okay. And those make you lean either  
17 way?

18 JUROR GILL: No. No.

19 MR. FINDLAY: Okay. Thank you, Mr. Gill.

20 A few more questions, then I'm going to give you  
21 guys back the time. And I do really appreciate it.

22 Anybody -- this is a funny question. But anybody  
23 have a bumper sticker or emblem on their car? And I'll come  
24 forward. I've got a -- I've got a Baylor sticker on my car.  
25 That's where my oldest is, and my wife and I met at Baylor.

1 Has anybody got a bumper sticker?

2 Some hands slowly going up.

3 Let's start with Mr. Kinsman, No. 1. Would you  
4 share with us what that bumper sticker is?

5 JUROR KINSMAN: I just have a Pearl Jam sticker  
6 from ACL music so...

7 MR. FINDLAY: Eddie Vedder, all right.

8 JUROR KINSMAN: That's it. There you go.

9 MR. FINDLAY: That's a good bumper sticker.

10 JUROR: Logo baseball.

11 MR. FINDLAY: Yeah.

12 JUROR: And middle school twirler.

13 MR. FINDLAY: Okay. Thank you.

14 Anybody on the second row?

15 Mr. Drew?

16 JUROR DREW: Cruz 2016.

17 MR. FINDLAY: Mr. Washington?

18 JUROR WASHINGTON: Mine's in the window. It's  
19 United States Navy.

20 MR. FINDLAY: Thank you. And thank you for your  
21 service, sir.

22 Anybody on the third row?

23 Mr. Wedgeworth?

24 JUROR WEDGEWORTH: Texas A&M.

25 MR. FINDLAY: Texas A&M. Go Aggies. Thank you,

1 sir.

2 And anybody on that last row?

3 No? Thank you, Ladies and Gentlemen.

4 Let me ask you another one which is kind of --  
5 might sound silly, but -- but it's a fun one. CNN people or  
6 Fox people?

7 Let me have a show of hands for CNN people.

8 Nobody?

9 Or Fox people?

10 Majority are Fox people. Fair enough.

11 Is there anything as I've been asking you  
12 questions -- sometimes inartfully -- anything that I have not  
13 asked that you think, if he had only asked that, or anything  
14 you've been dying to say, now is the time because I've got  
15 about 30 seconds left.

16 No?

17 Okay. Ladies and Gentlemen, I want to thank you  
18 again very much. And on behalf of the folks that I've  
19 introduced you to from Apple, we thank you. On behalf of the  
20 lawyers that are on this team, we thank you. And we look  
21 forward to presenting the case to the eight of you that are  
22 selected.

23 Thank you very much.

24 Thank you, your Honor.

25 THE COURT: Thank you, Mr. Findlay.

1 All right. Counsel, approach, please.

2 (Bench conference.)

3 THE COURT: Let's talk about strikes.

4 MR. FINDLAY: Mr. Drew, No. 9.

5 MR. HILL: Let me write this down.

6 MR. FINDLAY: That's our only for cause.

7 MR. HILL: I have several, your Honor.

8 THE COURT: Okay. What about No. 9? Do you have  
9 any objection to him?

10 MR. HILL: To challenge for cause? I do have an  
11 objection to a cause challenge for him.

12 THE COURT: Okay.

13 MR. FINDLAY: I understood what he said --

14 THE REPORTER: I'm sorry, could you back up?

15 MR. FINDLAY: Sorry.

16 I would agree he answered the questions  
17 appropriately, but Mr. Hill's firm is representing them. I  
18 don't think he can be fully non-biased, even if he tries.  
19 And he has this other commitment involving that case.

20 THE COURT: And --

21 MR. HILL: And just for the record, your Honor, my  
22 firm is not representing Mr. Drew. We represent a company he  
23 works for.

24 THE COURT: I had a note that he also owns stock in  
25 Apple. Does that give you any pause?

1 MR. HILL: It did not give us pause.

2 THE COURT: Okay.

3 MR. HILL: I didn't have that same note. I missed  
4 it.

5 THE COURT: Okay. I'm going to strike him for  
6 cause.

7 So that's your only one, Mr. Findlay?

8 MR. FINDLAY: I believe so. Yes. We have no  
9 other.

10 THE COURT: Mr. Hill, let's hear yours, please.

11 MR. HILL: Just one moment, your Honor.

12 THE COURT: Sure.

13 MR. HILL: Let me make a note.

14 Okay. Your Honor, I have challenges for cause to  
15 No. 21, Ms. Youngblood.

16 THE COURT: Any objection to that one?

17 MR. FINDLAY: No. We don't, no objection.

18 MR. HILL: No. 22, Ms. Price.

19 MR. FINDLAY: We can let her go.

20 MR. HILL: No. 7, Mr. Garland.

21 MR. FINDLAY: We would -- I don't see a -- I don't  
22 see a basis for No. 7.

23 MR. HILL: Your Honor, in particular, Mr. Garland  
24 discussed the length of travel he has and the fact that he's  
25 got a special needs grandson that he cares for. And he



1 indicated that it would be a hardship for him to consider and  
2 pay attention to the evidence.

3 It could be a distraction because of that. We  
4 think his inability to clearly hear and consider the evidence  
5 because of that potential life distraction, driving an hour  
6 each way to court with a special needs child, establishes a  
7 basis for cause. He couldn't fairly hear and consider the  
8 evidence.

9 MR. FINDLAY: He said it might be a problem. He  
10 didn't know. It sounded like it's a joint situation with he  
11 and his wife. I would assume his wife could pick him up.  
12 I think Your Honor asked anybody that just can't be here, and  
13 he didn't raise his hand, I don't recall. I don't think it's  
14 appropriate for cause, not at this point.

15 THE COURT: All right. I'm going to strike him.

16 Mr. Hill, do you have any others?

17 MR. HILL: I have one other, Your Honor, and this  
18 is -- I may need individual voir dire on this, Your Honor.

19 Ms. Stoddard, in response to one of Mr. Findlay's  
20 questions, raised the issue of venue. I want to know what's  
21 on her mind about that because it could be a basis for a  
22 cause challenge.

23 THE COURT: I'll let her stay back.

24 I had a note -- I also have a note that  
25 Mr. Wedgeworth who has three -- three to four times a week he

1 has occupational therapy. Anybody have an objection to him  
2 being stricken?

3 MR. FINDLAY: I'd like to talk -- can we talk to  
4 him about that?

5 THE COURT: I'll hold him back. No. 4 and No. 20.

6 MR. HILL: So, Your Honor, if we can just recap who  
7 has been struck so far?

8 THE COURT: All right. No. --

9 MR. HILL: 7.

10 THE COURT: -- 7, 9, 21, and 22.

11 MR. HILL: Thank you.

12 THE COURT: Okay. And I have No. 4 and 20 to be  
13 held back.

14 (Bench concluded.)

15 THE COURT: All right. Ladies and Gentlemen, thank  
16 you all for your participation. We're going to take a brief  
17 recess.

18 I'm going to ask that Panel Members No. 4 and  
19 No. 20 stay in the courtroom so we can follow up with you a  
20 little bit.

21 Everyone else, we're going to take a recess until  
22 11:45. I'm going to let you adjourn. I would caution you,  
23 do not talk with the lawyers or the parties. You've got  
24 these juror badges on, and they all know that you're in the  
25 jury panel. They should not approach you. And they won't

1 think you're rude if you do not approach them. So don't talk  
2 about the case with each other or with any lawyers or with  
3 anyone out in the hallway.

4 If you'll just take a nice break and a little  
5 before 11:45, if you'll come back here. And you can just --  
6 when Ms. Mayes lets you in, you can just be seated in any  
7 order on this side of the courtroom.

8 We'll be in recess until 11:45.

9 COURT SECURITY OFFICER: All rise for the jury  
10 panel.

11 (Jury Panel leaves the courtroom.)

12 THE COURT: Please be seated.

13 All right. Ms. Stoddard and Mr. Wedgeworth, thank  
14 you-all for hanging back. The lawyers just have a couple of  
15 more questions for you.

16 So, Ms. Stoddard, if you will -- if you'll approach  
17 the bench.

18 And, Counsel, if you'll come up here with me.

19 (Bench conference with Juror Stoddard.)

20 THE COURT: Okay. What questions do you have for  
21 Ms. Stoddard?

22 MR. HILL: Hi, Ms. Stoddard, how are you? I'm  
23 Wesley Hill. I represent CCE.

24 You raised one issued there at the end where  
25 Mr. Findlay asked you a question about you had a question in

1 your mind about why this lawsuit was here in Tyler.

2 JUROR STODDARD: Oh, yeah.

3 MR. HILL: And I wanted to ask you about that. I  
4 believe you're going to see that the facts in the case are  
5 going to show that Acacia, CCE's parent company, is a  
6 California company. Of course, Apple is a California  
7 company. This case is filed here in East Texas. Is that  
8 issue going to give you concern, or is that something you  
9 think --

10 JUROR STODDARD: No, sir. It was odd for -- you  
11 know, unusual.

12 MR. HILL: Just a -- just a thought you had?

13 JUROR STODDARD: Yeah.

14 MR. HILL: Not anything that you think --

15 JUROR STODDARD: No.

16 MR. HILL: -- would cause you to lean one way or  
17 another?

18 JUROR STODDARD: No.

19 MR. HILL: Okay. All right. That's all I needed  
20 to know. Thank you, ma'am.

21 THE COURT: Thank you, Ms. Stoddard.

22 (Juror Stoddard leaves the courtroom.)

23 (Open court.)

24 THE COURT: Mr. Wedgeworth, would you come on up?

25 Thank you.

1 (Bench conference with Juror Wedgeworth.)

2 THE COURT: Hi, Mr. Wedgeworth. The lawyers just  
3 had a couple more questions -- follow-up questions for you.

4 JUROR WEDGEWORTH: Okay.

5 MR. FINDLAY: You mentioned that you had a medical  
6 issue.

7 JUROR WEDGEWORTH: Yeah.

8 MR. FINDLAY: Could you explain that a little bit?

9 JUROR WEDGEWORTH: I was in an accident in the end  
10 of February. I actually blew my elbow up and fractured my  
11 hand and my thumb. And I just returned to work three weeks  
12 ago.

13 MR. FINDLAY: Okay.

14 JUROR WEDGEWORTH: I've been out since the first  
15 of -- I mean, about March 7th. And I've got physical therapy  
16 and occupational therapy that I've been going to.

17 MR. FINDLAY: May I ask how often?

18 JUROR WEDGEWORTH: I'm going -- this week I go  
19 tomorrow and Friday for occupational therapy here in  
20 Carthage. Friday morning at 10:00 o'clock I do physical  
21 therapy in Carthage. And occupational therapy is in Tyler  
22 over here at ETMC.

23 MR. FINDLAY: All right. And would it -- to your  
24 knowledge, would it be detrimental to your recovery if you  
25 had to postpone that or move it or -- just be honest with us,

1 sir. We're just trying to find that out.

2 JUROR WEDGEWORTH: I really -- I get -- I have  
3 episodes where I get stiff. And I -- since I've returned to  
4 work, I move around a good with. But when I sit, it -- it  
5 hurts. So I've kind of tried to keep going so...

6 MR. HILL: Do you think sitting in the jury box all  
7 day would be a problem for you because of that?

8 JUROR WEDGEWORTH: Yeah, just as long as I sit.

9 Now, if I was excused to do some exercises and  
10 things like that, but it does have lingering effects when I  
11 just sit for, you know, three or four or five hours.

12 MR. HILL: Has your doctor ordered you that that's  
13 important to you, that you need to do this therapy?

14 JUROR WEDGEWORTH: Yes. I have no motion. This is  
15 the motion I have with my elbow.

16 MR. HILL: Okay.

17 THE COURT: Thank you very much, Mr. Wedgeworth. I  
18 appreciate it.

19 MR. HILL: Appreciate it.

20 JUROR WEDGEWORTH: Thank you.

21 MR. FINDLAY: I hope you're feeling better.

22 JUROR WEDGEWORTH: Thank you.

23 (Juror Wedgeworth leaves the courtroom.)

24 THE COURT: Okay. So we're going to -- we're going  
25 to strike Mr. Wedgeworth. And I'm not going to strike

1 Ms. Stoddard for cause.

2 So I show for cause Juror Nos. 7, 9, 20, 21, and  
3 22. That's five. We've got 24 on our panel. We just lost  
4 five. I need eight, which leaves us with 11. You all get  
5 five strikes a piece.

6 MR. FINDLAY: Okay.

7 THE COURT: Okay?

8 MR. HILL: Thank you, your Honor.

9 THE COURT: You have until 11:45.

10 MR. FINDLAY: Thank you, your Honor.

11 THE COURT: We'll be in recess until 11:45.

12 COURT SECURITY OFFICER: All rise.

13 (Recess.)

14 (Jury out.)

15 COURT SECURITY OFFICER: All rise.

16 THE COURT: Please be seated.

17 MR. HILL: Your Honor, may we approach briefly?

18 THE COURT: Yes.

19 (Bench conference.)

20 MR. HILL: Your Honor, I have a -- we had one  
21 double strike. And there are two jurors still in play who  
22 didn't get reached because of the double strike. And I was  
23 going to propose to Mr. Findlay -- I didn't have a chance to  
24 do it before we got back in here for this point -- that since  
25 that is available, that the Court allow the parties each one

1 additional strike that we can then exercise. It would take  
2 us through the full list. And we would go from there.

3 THE COURT: Any response?

4 MR. FINDLAY: No, we're happy with the list now,  
5 Judge.

6 THE COURT: Okay.

7 MR. HILL: Okay.

8 THE COURT: That is denied. Thank you.

9 MR. HILL: Thank you.

10 (Bench conference concluded.)

11 THE COURT: All right. If your name is called,  
12 please come forward promptly and take your seat over here as  
13 directed to you by the court security officer.

14 Ms. Hardwick, if you will now call the names of the  
15 selected jurors, please.

16 COURTROOM DEPUTY: Yes, your Honor.

17 Bruce Faulkner, Christopher Jennings, Larry Burney,  
18 Hartest Washington, Toni Palmer, Lauren Wade, Valarie  
19 Stockman, and Edward Seale.

20 THE COURT: All right. Ladies and Gentlemen of the  
21 Jury, if you will please stand and raise your right hand to  
22 be sworn.

23 (The oath is administered to the jury.)

24 THE COURT: Thank you. You may be seated.

25 Ladies and Gentlemen of the Jury Panel, I want to



1     thank you, again, for your service today. This process would  
2     not have been possible without you. Thank you for coming and  
3     giving me half of your day, giving the parties your time. It  
4     matters. It's important. And I thank you for doing it.  
5     You were not one of the lucky number 8, and so with that, you  
6     are excused. Thank you again.

7             COURT SECURITY OFFICER: All rise for the jury  
8     panel.

9             (Unselected Jury Panel members leave the  
10     courtroom.)

11            THE COURT: Thank you. Please be seated.

12            All right. Ladies and Gentlemen of the Jury, we  
13     are going to take a lunch break in just a minute. But before  
14     we do, I'm going to tell you a little bit about what's going  
15     the happen the rest of the afternoon.

16            I expect that we will finish each day at or around  
17     5:00 o'clock, and we will start each morning at or around  
18     9:00 a.m.

19            The parties, both sides together, are providing  
20     lunch for you. So there is going to be lunch here in the  
21     jury room.

22            If you need to leave the jury room -- there are  
23     restrooms. There are drinks. There are -- everything you  
24     need in the jury room. But if you need to leave, if you need  
25     a break, if you'll just alert our court security officers,

1 and they'll tell you the procedures for all of that.

2 So we're going to take a break, a lunch break until  
3 1:30. Again, I just remind you do not discuss the facts of  
4 the case with each other or with anyone. And should you  
5 interact with any -- or see anyone in the hallway, you should  
6 not interact with them, okay?

7 We'll be in recess until 1:30.

8 COURT SECURITY OFFICER: All rise.

9 (Jury leaves the courtroom.)

10 THE COURT: Please be seated.

11 I am going to give you all a lunch break. But I  
12 know that we have a few things we need to take up that we  
13 didn't quite get to this morning. And what I would like to  
14 do is return at 1:00 o'clock to take up any slide or exhibit  
15 objections, with the caveat that I intend to get us rolling  
16 back on schedule at 1:30. So let's discuss what we need to  
17 resolve to get through this afternoon's testimony and then  
18 we'll get going.

19 Is there anything that the Court can help you with  
20 before we recess for lunch?

21 MR. CALDWELL: I don't think so, with the one  
22 observation, Your Honor, that it seems like they want to take  
23 the back half of the inventor's presentation and say it can't  
24 be presented. And I understand you want to take that up at  
25 1:00. My concern is rolling from 1:00 to 1:30 discussing it

1 and then hitting preliminary instructions and opening and we  
2 don't have time to adapt. I don't think we're going to need  
3 to adapt because in my experience the inventor can teach his  
4 invention. So I'm worried about that due to the time.

5 THE COURT: Fair point. Let's take it up now.

6 MR. CALDWELL: It's Apple's objections to.

7 THE COURT: Okay. I see Mr. Sims over there.

8 MR. SIMS: May I approach, Your Honor?

9 THE COURT: Yes.

10 MR. SIMS: Good afternoon, again, Your Honor.

11 So, as Mr. Caldwell foreshadowed, I will be  
12 discussing 14 -- the last 14 slides of the -- Mr. Sebire's  
13 direct examination that were disclosed to us last night.  
14 And they are not numbered. So I apologize for -- some are  
15 numbered and some are not, so I'm just going to address them  
16 as a group, and then call out specifically what I believe to  
17 be the -- the most objectionable slides.

18 To frame the issue for the Court, I believe CCE's  
19 Motion in Limine No. 9, which Your Honor addressed at the  
20 pretrial conference, frames the issue best. CCE said we  
21 filed this motion in limine simply for the Court to establish  
22 that boundary between what the technical experts can testify  
23 to versus what would be an extrapolation or opinion that  
24 would fall under Rule 702.

25 The Court granted -- as the Court is aware, the

1 Court granted CCE's Motion in Limine No. 9 and set that  
2 boundary for the parties to abide by at trial. We now ask  
3 that CCE live by that boundary.

4 When we received Mr. Sebire's slides last night,  
5 which the Court has a copy of, it's our position that with  
6 respect to at least two of those slides -- and the entire  
7 group crossed the line in the 702. Because Mr. Sebire was  
8 not disclosed as an expert witness, did not file an expert  
9 report in this case, these slides are objectionable and  
10 should be excluded.

11 So I'd -- I'd like to just talk about for a second  
12 the general group of slides and then -- and then point out to  
13 you in specific.

14 And what strikes me about the group of slides that  
15 CCE disclosed that -- that we objected to is it speaks more  
16 as like a technology tutorial -- excuse me -- technology  
17 tutorial that you would see during a claim construction or  
18 something like that. And then culminates at the end -- if I  
19 could direct the Court's attention to the last slide in the  
20 deck. It's entitled "The invention." This slide is numbered  
21 Slide 40.

22 What we basically have here is -- is shorthand  
23 descriptions of the claim elements of Claim 1, asserted  
24 Claim 1. And it appears that Mr. Sebire will be defining the  
25 invention in his own words.

1           As I said, he is not -- he has not been disclosed  
2 as an expert in this case. The Court has construed claim  
3 terms. The experts will apply those constructions to reach  
4 their opinions in this case.

5           Mr. Sebire should not be allowed as a fact witness  
6 to just summarize and leave, frankly, important parts of the  
7 claim language out of each of these elements.

8           With respect to Slide -- the next slide --

9           Chris, can I have Slide 3 up there, please?

10          I apologize, Your Honor.

11          Your Honor, on Slide -- it's -- it's the fourth to  
12 the last slide in the deck. I apologize for the delay.  
13 It's titled "BSR formats" in the top right-hand corner. And  
14 lists three different types of formats: Long, short and  
15 truncated.

16          And -- and the second and third one frame the  
17 issue -- one of the issues as the dispute between the parties  
18 that CCE's infringement theory relies upon the short and  
19 truncated BSR formats as they described it as being two  
20 different types of BSR formats.

21          And if you will -- if I can direct the Court's  
22 attention to the other document I handed you, which is an  
23 excerpt from Dr. Caloyannides' infringement report, on the  
24 bottom of Page 26 starting at Paragraph 72.

25          This section entitled "Overview of LTE buffer

1 status reporting" is basically the same -- what these slides  
2 indicate would be the same testimony that Mr. Sebire intends  
3 to give this afternoon or tomorrow morning, just a general  
4 background on buffer status reporting which is contained and  
5 disclosed by Dr. Caloyannides in his report.

6 And at the beginning of Paragraph 72  
7 Dr. Caloyannides says there's two BSR formats described by  
8 Section 321, the short format, short BSR type, or truncated  
9 BSR type.

10 And here if you look back at the slide Mr. Sebire  
11 intends to present this afternoon, he has presented three  
12 different types of formats. This, Your Honor, is squarely  
13 expert testimony within Rule 702. Mr. Sebire was not  
14 disclosed as an expert. Dr. Caloyannides has, at the  
15 minimum, cumulative testimony. He should be the one to talk  
16 about that and give those opinions that were disclosed. He  
17 was deposed on these.

18 Mr. Sebire should not be allowed to come up here  
19 and summarize the claims in his own language; and, B, present  
20 format slides, like Slide 28, that Dr. Caloyannides should be  
21 allowed to talk to in his expert report.

22 And the last issue I'd just like to briefly raise  
23 with the Court is, although there is not a direct comparison  
24 of the claims to the accused products, which would be --  
25 which Mr. Sebire clearly cannot do, there are throughout the

1 slides -- there's four instances I'd be happy to identify for  
2 the Court of applications of -- from like the face of the  
3 iPhone that have the phone and the e-mail, Facebook, that  
4 clearly suggest at a minimum that here is our infringement  
5 analysis, and here's something with the accused product. And  
6 that suggests to the jury that -- an infringement analysis to  
7 the accused products that Mr. Sebire should not be allowed to  
8 present.

9 Thank you.

10 THE COURT: Response.

11 MR. CALDWELL: Your Honor, I think it is no  
12 surprise that there's overlap between what the inventor  
13 invented and put in his patent and what the technical experts  
14 are going to come back and talk about when analyzing  
15 infringement of the patent. So observing overlap with  
16 Dr. Caloyannides' report I think is uninteresting.

17 It is true that Mr. Sebire is not going to opine on  
18 infringement. And I'm actually a little bit curious about  
19 the argument about he's showing BSR types and things like  
20 that. I mean, just to where we were talking about this  
21 unproduced document in the debate that we heard earlier about  
22 how the other side wants to cross him on working group  
23 documents, talking about the triggering of different types of  
24 buffer status reports, and things like that, in light of  
25 that, I think the argument makes no sense.

1 But in any event, his working group was working on  
2 buffer status reports and ways to improve reporting. So he's  
3 describing the fact of his invention. He doesn't have access  
4 to the code that is used to prove infringement. And he's not  
5 going to render any opinions on infringement. He's just  
6 describing his invention and how they worked to result in an  
7 improvement that improved over what was existed before.

8 THE COURT: On this last slide, is he, in fact,  
9 putting the claims into his own words or taking any liberties  
10 with the Court's claim construction?

11 MR. CALDWELL: No, it's definitely not that.

12 THE COURT: Okay.

13 MR. CALDWELL: What I think we're doing there is  
14 that there is a figure that was just submitted with his  
15 application. And like monitor buffers is what's written  
16 there. It's -- so it's him describing what his invention is.  
17 And, again, he's definitely not going to do any mapping it to  
18 infringement or opining, that sort of thing.

19 THE COURT: Okay. I'm going to let him in.

20 What other objections do you have?

21 MR. SIMS: Those are the objections, Your Honor.

22 If I could just have a quick response to that?

23 THE COURT: No. Thank you.

24 Anything else I can take up with you all before  
25 lunch?



1 MR. FINDLAY: Very -- very quickly, Your Honor.

2 I don't think this is likely intentional. I don't  
3 know. Yesterday I called Mr. Hill. Mr. Hill and I spoke  
4 about my concern that they were going to try to equate the  
5 clear and convincing evidence standard used in a patent case  
6 to invalidate a patent with the family issues. The one we  
7 hear the most about is taking a child away from the home.

8 During voir dire Mr. Hill said something about  
9 clear and convincing evidence, that burden in terms of  
10 invalidity is like a civil commitment like sending someone to  
11 an insane asylum.

12 I think that's a clear violation of the good-faith  
13 understanding that I had with Mr. Hill. Maybe he's going to  
14 say I'm wrong. We had this specific discussion yesterday  
15 morning.

16 It bothers me tremendously that this was brought  
17 up. Because if I had thought he was going to do this, I  
18 would have raised it with Your Honor beforehand. I think a  
19 curative instruction, which just simply tells the jury, maybe  
20 with the final instructions, that it is not similar or it's  
21 not akin to this sort of, you know, frightening situation  
22 where someone is involuntarily put in an insane asylum, is  
23 appropriate to be made.

24 MR. HILL: Your Honor, I am -- I am going to tell  
25 you he's wrong. Mr. Findlay did call me. And what he called

1 to ask me about is whether we were going to use the reference  
2 in the Family Code to a suit to terminate parental rights.  
3 That's the family law analogy that has been used often in  
4 this Court without objection. And I will note here there was  
5 no objection made at the time.

6 That's the analogy that's been used, and I assured  
7 him I would not use that analogy. I understand that some  
8 Judges in our district don't favor that and that other Courts  
9 have commented on it.

10 And so in lieu of that, I found another perfectly  
11 correct legal analogy of the application of clear and  
12 convincing evidence standard. And it's not any kind of  
13 scandalous context. It's in the context that has been set by  
14 the U.S. Supreme Court as a fundamental constitutional right  
15 in Addington -- Addington versus Texas, 441 U.S. 418, 1979  
16 U.S. Supreme Court case, which imposes the clear and  
17 convincing evidence standard any time there is an issue of a  
18 civil commitment.

19 People serve in commitment proceedings. It's a  
20 fair question to ask whether someone has applied the clear  
21 and convincing evidence standard. It is the same legal  
22 standard, and it infects no bias or any issue with our jury.  
23 It tests their knowledge about that standard and whether they  
24 have applied a heightened burden of proof. In fact, one of  
25 our jurors had.

1           So the suggestion that that is, one, welching on  
2     our deal doesn't sit too well with me. I don't think there  
3     is any question.

4           I told Mr. Findlay when we talked on the phone I  
5     won't use the family law analogy. I will use other analogies  
6     to analogize the burden of proof.

7           I -- so I left off limits what was raised to me,  
8     and I used a perfectly permissible and constitutionally  
9     correct application of the clear and convincing burden as an  
10    example.

11           MR. FINDLAY: I submit he did not. I submit he  
12    intentionally used one that was prejudicial, and the  
13    suggestion that this sort of thing wasn't encompassed in our  
14    discussion is -- I'm -- I'm personally offended by that  
15    considering the relationship that one East Texas counsel  
16    normally has with another. It's an improper analogy. It's  
17    prejudicial. And I would, respectfully, resubmit the request  
18    that the jury be told something along those lines.

19           Thank you, Your Honor.

20           THE COURT: Thank you.

21           All right. That request is denied. I will  
22    instruct the jury on the burdens under the law but no more.

23           We're going to be in recess until 1:30. I  
24    understand I've resolved all of your issues, and we're ready  
25    to go into preliminaries and opening statements at 1:30.

